

STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

☐ Affirm and adopt (no changes)☐ Affirm with changes☐ Reverse☒ Modify up☐ Injured Workers' Benefit Fund (§4(d))☐ Rate Adjustment Fund (§8(g))☐ Second Injury Fund (§8(e)18)☐ PTD/Fatal denied☒ None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Pamela Kustwin,

Petitioner,

14IWCC0281

vs.

NO: 05 WC 39631

09 WC 13048

09 WC 13049

Kraft,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the parties herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, average weekly wage, temporary total disability benefits, medical expenses and permanency, modifies the Decision of the Arbitrator regarding case 05WC39631, as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Regarding the issue of average weekly wage, the Commission notes that the wage statement provided by Respondent shows that Petitioner earned \$34,838.19 in the 52 weeks before the June 28, 2005 accident. (RX2) That amount includes overtime worked by Petitioner. The Commission notes that Petitioner did not provide any testimony indicating that the overtime she worked was mandatory and, therefore, finds that Petitioner's earnings in the 52 weeks preceding the accident actually totaled \$31,971.12. However, as noted by the Arbitrator in his decision, Petitioner did not always work 40 hour weeks. According to the wage statement in evidence, Petitioner worked 1,645 hours in the 52 weeks preceding the accident. According to *Sylvester v. Industrial Commission*, 197 Ill.2d 225, 230-231 (2001),

"[S]ection 10 provides four different methods for calculating average weekly wage. (1) By default, average weekly wage is 'actual earnings' during the 52-week period preceding the date of injury, illness or disablement, divided by 52. (2) If the employee lost five or more calendar days during that 52-week period, 'whether or not in the same week,' then the employee's earnings

are divided not by 52, but by 'the number of weeks and parts thereof remaining after the time so lost has been deducted.' (3) If the employee's employment began during the 52-week period, the earnings during employment are divided by 'the number of weeks and parts thereof during which the employee actually earned wages.' (4) Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is 'impractical' to use one of the three above methods to calculate average weekly wage, 'regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.'"

The record in the case at bar fails to indicate if Petitioner missed more than 5 calendar days during the 52 weeks preceding the accident. Therefore, the Commission finds that the only calculation method available in this case is method (1), dividing Petitioner's earnings of \$31,971.12 by 52 weeks, which would make Petitioner's average weekly wage \$614.83. However, as noted by Petitioner in her Statement of Exceptions, Respondent stipulated to an average weekly wage of \$791.85. Petitioner, relying on *Neri v. Doherty Giannini Reitz Construction*, 13 IWCC 84, citing *Walker v. Industrial Commission*, 345 Ill.App.3d 1084 (2004), argues that Respondent is bound by its stipulation/claim that Petitioner's average weekly wage is \$791.85. The court in *Walker* explained that "[t]he language of section 7030.40 indicates that the request for hearing is binding on the parties as to the claims made therein. *Walker*, 345 Ill. App. 3d at 1088. Indeed, Section 7030.40 of the Rules Governing Practice before the Illinois Workers' Compensation Commission states that:

"[b]efore a case proceeds to trial on arbitration, the parties (or their counsel) shall complete and sign a form provided by the Industrial Commission called Request for Hearing. However, in the event a party (or his counsel) shall fail or refuse to complete and sign the document, the Arbitrator, in his discretion, may allow the case to be heard and may impose upon such party whatever sanctions permitted by law the circumstances may warrant. **The completed Request for Hearing form, signed by the parties (or their counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case.**" 50 Ill. Adm. Code Section 7030.40 (2006) (emphasis added).

In *Domagalski v. Industrial Commission*, 97 Ill. 2d 228 (1983), the Illinois Supreme Court explained that whether or not the Commission is bound to a stipulation made by the parties depends on whether the stipulation concerns a question of law or a question of fact:

"The claimant, citing *General Electric Co. v. Industrial*

*Commission (1952), 411 Ill. 401*, contends that the Commission was without authority to enter an order contrary to the terms of the stipulation. The stipulation in *General Electric* was that the employer had provided medical services to the claimant. **This court said that ‘a stipulation by the parties as to the facts is conclusive so long as it stands.’** (411 Ill. 401, 405; see also T. Angerstein, Illinois Workmen’s Compensation secs. 1975, 1976 (rev. ed. 1952).) Different from *General Electric*, the stipulation which the claimant here attempts to enforce concerned a question of law, viz, whether her injuries arose out of and in the course of employment. Parties cannot bind a court by stipulating to a question of law of the legal effect of facts. *People v. Levisen (1950), 404 Ill. 574; National Bank v. Murphy (1943), 384 Ill. 61. Domagalski, 97 Ill. 2d at 235* (emphasis added).

The average weekly wage of a claimant is a question of fact. Respondent stipulated that Petitioner’s earnings were \$41,176.20 and that Petitioner’s average weekly was \$791.85 (JX1), contrary to the information it provided via the wage statement (RX2). The Commission finds that, regardless of this contradiction, Respondent is bound to its stipulation under *Domagalski*. Therefore, the Commission finds that Petitioner’s average weekly wage is \$791.85.

Petitioner also argues that the award of temporary total disability benefits should be increased from 27-2/7 weeks to 28 -1/7 weeks. As explained above, the parties are bound to the stipulations they made on the Request for Hearing form. Petitioner stipulated on that form that she was entitled to temporary total disability benefits for 27-2/7 weeks. As such, the Commission holds Petitioner to her stipulation and affirms the Arbitrator’s award of 27-2/7 weeks of temporary total disability benefits.

Next, the Commission notes that the Arbitrator found that Petitioner suffered a 1% loss of use of the person as a whole as a result of June 28, 2005 right shoulder injury. The Commission further notes that Arbitrator took into account Petitioner’s February 5, 1999 settlement, which dealt with, among other injuries, prior right shoulder injuries sustained at work. Petitioner received benefits equaling 40% loss of use of the right arm, 15% loss of use of the right hand, and 2% loss of use of the person as a whole. In considering Petitioner’s prior settlement in his decision, the Arbitrator apparently applied the settlement award for Petitioner’s prior right shoulder injuries as a credit against the current June 28, 2005 right shoulder injury.

In *Killian v. Industrial Commission*, 148 Ill.App.3d 975 (1986), the appellate court dealt with an employer seeking a credit for a prior back injury. The claimant had suffered a back injury at work in 1975 and settled the matter for 7.5% loss of use of right leg and 7.5% loss of use of left leg, which was how benefits for back injuries were awarded at the time. The claimant then suffered work accidents on March 16, 1979, and January 15, 1980, both of which involved claimant’s back. At the hearing for both accidents, the employer sought a credit for Petitioner’s 1975 back injury. The Commission failed to rule on the issue of credit, but on appeal, the circuit court denied the credit. In affirming the circuit court’s denial of the credit, the appellate court explained that:

“Paragraph 17 of section 8(e) follows in numerical order the 15 specific members for which compensation amounts are specified. The first sentence of section 8(e)(17) refers to the loss or partial loss of any member ‘including hand, arm, thumb or fingers, foot or any toes.’ Employer argues that the legislature’s use of the word ‘including’ indicates that more body parts than those listed in the first sentence of 8(e)(17) are intended to be included within the definition of member. We agree that the word ‘including’ suggests those members listed in 8(e)(17) are not exclusive, but this interpretation does not mean that a back is a member. Rather, we read the members listed in 8(e)(17) as representative of the more complete listing of members contained in section 8(e). Every specific member listed in 8(e)(17) is also listed first in sections 8(e)(1) through (e)(15). Therefore, we interpret the term ‘member’ to refer only to those body parts which are enumerated in sections 8(e)(1) through (e)(15).

In the second sentence of section 8(e)(17), which governs the permanent loss or permanent partial loss of use of a member and which is relied upon by employer here, we observe that the sentence contains the phrase ‘any such member.’ This phrase directs the reader to the preceding sentence which references leg, fingers, toes, foot, hand, arm, and thumb as members. Since the members listed in the first sentence are representative of the more complete listing in sections 8(e)(1) through (e)(15), the second sentence in 8(e)(17), with its phrase ‘any such member,’ must also include as members those body parts listed in sections 8(e)(1) through (e)(15). The body part ‘back’ is not listed as a member in sections 8(e)(1) through (e)(15) or anywhere else in section 8(e). Therefore, we conclude the credit in section 8(e)(17) does not apply to injuries to the back.

Based upon our interpretation of the statute, claimant did not sustain an injury to a member when he sustained injuries to his back on March 16, 1979, and January 15, 1980. Therefore, employer is not entitled to a credit under section 8(e)(17), which requires successive injuries causing loss of use of the same member.” *Killian*, 148 Ill.App.3d at 978.

In *Will County Forest Preserve v. IWCC*, 2012 IL App (3d) 110077WC, ¶21, the appellate court determined that a shoulder injury does not qualify as an injury to the arm. The court then explained that:

“[s]ince claimant’s shoulder injury does not qualify as a scheduled loss to the arm, we turn to other provisions of the Act for guidance. We find applicable the first subpart of section 8(d)2. That provision provides for a person-as-a-whole award where the



claimant sustains serious and permanent injuries not covered by section 8(c) or 8(e) of the Act. In this case, there is no evidence that claimant suffered disfigurement as required for an award under section 8(c) of the Act (820 ILCS 305/8(c)(West 2008)). In addition, as set forth above, the injury to claimant's right shoulder does not qualify as a scheduled loss to the arm under section 8(e)(10). As such, we hold that benefits are proper under the first subpart of section 8(d)2." ¶21

Based on *Killian and Will County Forest Preserve*, Respondent is not entitled to a credit for Petitioner's prior right shoulder injury. Therefore, the Commission must reconsider the nature and extent of Petitioner's right shoulder injury. In doing so, the Commission notes that Petitioner underwent conservative treatment for her right shoulder in October and November of 2003 following a motor vehicle accident. (PX2,RX5,T.10,57-58) The Commission further notes that Petitioner's inability to work since late 2006 is not related to her right shoulder condition, but to an unrelated personal condition. (T.29) Petitioner has not sought treatment for her right shoulder since March 26, 2009, at which time Dr. Marra reviewed the March 8, 2009 right shoulder MRI that showed a high-grade partial tear of the supraspinatus tendon at myotendinous junction, and the radiologist who read the MRI could not decide if the tear was evidence of a chronic condition or severe tendinosis. (PX3) Dr. Rhode, Petitioner's treating physician, opined that Petitioner's right shoulder recurrent rotator cuff tear is related to Petitioner's "original work related exposure." (PX6) Dr. Papierski, Respondent's Section 12 examiner, opined that "[i]t is possible that there was subsequent rotator cuff tear of the right shoulder in March of 2009. It is not clear that this would be causally related to the reported injury of June 28, 2005." (RX3) Based on the totality of the evidence, the Commission finds that 7.5% loss of use of the person as a whole as a result of her work-related right shoulder injury on June 28, 2005.

Finally, the Commission notes that in its Statement of Exceptions, Respondent argues that the Arbitrator erred in failing to award Respondent a credit for \$15,459.93 for temporary total disability benefits paid. In her Statement of Exceptions, Petitioner agrees that Respondent is entitled to this credit. Therefore, the Commission awards Respondent a credit of \$15,459.93 for temporary total disability benefits paid to Petitioner.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 5, 2013, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$527.90 per week for a period of 27-2/7 weeks, from November 28, 2005 through January 8, 2006, and from January 23, 2006 through June 20, 2006, that being the period of temporary total incapacity for work under Section 8(b) of the Act. Respondent shall have a credit of \$15,459.93 for temporary total disability benefits paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$475.11 per week for a period of 37.5 weeks, as provided in Section 8(d)2 of the Act, for the reason that the injuries sustained caused the 7.5% loss of use of the person as a whole.

14IWCC0281

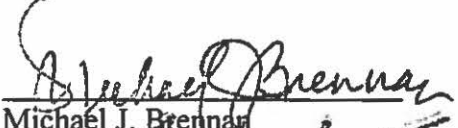
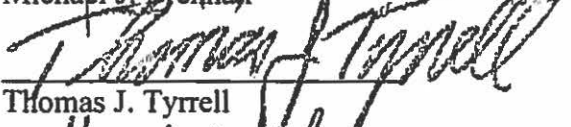
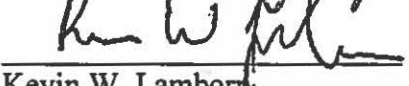
IT IS FURTHER ORDERED BY THE COMMISSION that the medical care provided to Petitioner for her right shoulder was reasonable and necessary. Respondent shall pay the medical bills incurred in the treatment of her right shoulder after February 1, 2006, pursuant to Sections 8(a) and 8.2 of the Act. The medical charges for the treatment of Petitioner's right elbow and left shoulder are not causally related to the June 28, 2005 accident, and are denied. The medical charges of Loyola University Health System for treatment of Petitioner's skin sores and cough are also not related to the June 28, 2005 accident, and are denied. Respondent shall be given a credit for any amount it paid toward medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold Petitioner harmless for all the medical bills paid by its group health insurance carrier.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$4,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 16 2014  
MJB/ell  
o-03/18/14  
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Michael J. Brennan  
  
Thomas J. Tyrrell  
  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**14IWCC0281**

**KUSTWIN, PAMELA**

Employee/Petitioner

Case# **05WC039631**

09WC013048

09WC013049

**KRAFT**

Employer/Respondent

On 2/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL  
CHRISTOPHER MOSE  
77 W WASHINGTON ST 20TH FL  
CHICAGO, IL 60602

0560 WIEDNER & MCAULIFFE LTD  
JANET PALLARDY  
ONE N FRANKLIN ST SUITE 1900  
CHICAGO, IL 60606

STATE OF ILLINOIS )

COUNTY OF COOK )

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

14IWCC0281

PAMELA KUSTWIN  
Employee/Petitioner

Case #05 WC 39631  
09 WC 13048  
09 WC 13049

v.

KRAFT  
Employer/Respondent

*An Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Robert Williams, arbitrator of the Workers' Compensation Commission, in the city of Chicago, on January 23, 2013. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues, and attaches those findings to this document.

ISSUES:

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to the respondent?
- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☒ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?

- J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?
- K. ☒ What temporary benefits are due: ☐ TPD ☐ Maintenance ☒ TTD?
- L. ☒ What is the nature and extent of injury?
- M. ☐ Should penalties or fees be imposed upon the respondent?
- N. ☒ Is the respondent due any credit?
- O. ☐ Prospective medical care?

#### FINDINGS

- On June 28, 2005, April 28, 2006, and May 19, 2006, the respondent was operating under and subject to the provisions of the Act. The dates are the subject matter of claims 05 WC 39631, 09 WC 13048 and 09 WC 13049, respectively.
- On those dates, an employee-employer relationship existed between the petitioner and respondent.
- On June 28, 2005, the petitioner sustained injuries that arose out of and in the course of employment.
- Timely notice of the June 28, 2005, accident was given to the respondent.
- At the time of injury, the petitioner was 49 years of age, *married* with no children under 18.
- The parties agreed that the petitioner is entitled to temporary total disability benefits for 27-2/7 weeks, from November 28, 2005, through January 8, 2006, and from January 23, 2006, through June 20, 2006, for the June 28, 2005, accident and is not entitled to temporary total disability benefits for the May 19, 2006, claim.

#### ORDER:

- The respondent shall pay the petitioner temporary total disability benefits of \$423.00/week for 27-2/7 weeks, from November 28, 2005, through January 8, 2006, and from January 23, 2006, through June 20, 2006, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$380.70/week for a further period of 5 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent 1% loss of use of the person as a whole.



- The respondent shall pay the petitioner compensation that has accrued from June 28, 2005, through January 23, 2013, and shall pay the remainder of the award, if any, in weekly payments.
- The medical care rendered the petitioner for her right shoulder was reasonable and necessary. The medical charges for the treatment of the petitioner's right elbow and left shoulder are not related to her work injury on June 28, 2005, and are denied. The medical charges of Loyola University Health System for treatment of her skin sores and cough are not related to her work injury on June 28, 2005, and are denied. The respondent shall pay the medical bills incurred after February 1, 2006, in accordance with the Act and the medical fee schedule. The respondent shall be given credit for any amount it paid toward the medical bills, including any amount paid within the provisions of Section 8(j) of the Act, and any adjustments, and shall hold the petitioner harmless for all the medical bills paid by its group health insurance carrier.
- Claims #09 WC 13048 and #09 WC 13049 are dismissed and the petitioner's request for benefits for her left shoulder and right wrist are denied.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Robert Williams

  
Date

FEB - 5 2013

## FINDINGS OF FACTS:

On June 28, 2005, the petitioner sustained a re-injury to her right shoulder while doing inspection work on a cookie line. She received care at the Clearing Clinic on the 29<sup>th</sup>. Dr. Bush-Joseph saw her on July 1<sup>st</sup> and opined that except for revealing a prior distal clavicle excision, x-rays of her shoulder were unremarkable. The doctor noted that the range of motion of the petitioner's shoulder was limited by pain primarily in the sub deltoid. He gave her a cortisone injection and started physical therapy at AthletiCo on July 26<sup>th</sup>.

On August 27<sup>th</sup>, she started care with Dr. Blair Rhode of South Chicago Orthopedics. On November 29<sup>th</sup>, Dr. Rhode performed a revision arthroscopic right subacromial decompression, a distal clavicle excision, a rotator cuff repair and a suprascapular nerve block. The petitioner started physical therapy on December 5<sup>th</sup>. At a post-op visit on December 7<sup>th</sup>, Dr. Rhode noted a left shoulder positive impingement sign with internal rotation representing the posterior/infraspinatus rotator cuff.

The petitioner worked without using her right arm/hand doing inspection on a cracker line from January 9 through 22, 2006. The petitioner reported lateral and medial right elbow pain to the therapist on February 1<sup>st</sup> and right wrist pain on the 15<sup>th</sup>. On February 6<sup>th</sup>, Dr. Rhode gave the petitioner left-handed work restrictions. On March 6<sup>th</sup>, Dr. Rhode noted moderate symptoms magnification by the petitioner with regards to her right shoulder. He noted that palpation of her right elbow elicited diffuse pain. He gave the petitioner an injection into her right acromioclavicular space and noted that she had significant AC pain somewhat magnified and that no bony work to the AC joint was performed at surgery.

On April 28<sup>th</sup>, the petitioner received an injection into the superior portion of her left shoulder acromioclavicular space. On May 19<sup>th</sup>, Dr. Rhode noted pain with palpation over the acromioclavicular joint with only the left arm, negative impingement signs bilaterally, and right elbow pain at the lateral jointline and at the lateral epicondyle. On June 16<sup>th</sup>, the petitioner received an injection into her right acromioclavicular space and right lateral epicondyle. The petitioner returned to work on June 21<sup>st</sup>. An MRI of the petitioner's left shoulder on June 8<sup>th</sup> revealed tendinopathy of the supraspinatus without a focal tear and the subscapularis, and prominent AC spurs.

On June 28<sup>th</sup>, Dr. Rhode noted that the petitioner's work status was full duty with no restrictions. On September 6<sup>th</sup>, the doctor noted complaints of headaches, right elbow, 1<sup>st</sup> CMC pain at the base, right and left shoulder pain and a positive Spurling sign for her cervical spine, and gave the petitioner an injection into her right acromioclavicular joint. At the petitioner's last visit with Dr. Rhode on September 27<sup>th</sup>, the doctor noted pain with palpation over the acromioclavicular joint, a negative impingement sign and 5/5 strength with external rotation and supraspinatus isolation for both shoulders. He also reported a positive Spurling sign for the cervical spine and pain with palpation of the lateral epicondyle of her right elbow. In a second note dated September 27<sup>th</sup>, Dr. Rhode noted a positive impingement sign for the petitioner's left shoulder and reported that he injected her right subacromial space.

The petitioner saw Dr. Marra of Loyola University Health System on September 4, 2008, for bilateral shoulder and right elbow pain. Dr. Marra gave the petitioner a right shoulder injection on March 6, 2009. An MRI of her right shoulder on March 8<sup>th</sup> revealed a high grade partial tear of the supraspinatus tendon, a chronic partial

tear/severe tendinosis of the subscapularis and infraspinatus tendon. The petitioner saw Dr. Marra on April 7, 2011, for her right shoulder. She saw Dr. Steve Gnatz of Loyola University Health System for low back pain on May 13, 2011.

She saw Dr. Bednar of Loyola University Health System on June 21, 2011, for wrist pain and reported sustaining bilateral wrist fractures a year earlier from a fall. An x-ray of her right wrist on June 22<sup>nd</sup> revealed a united distal radial fracture with residual dorsal angulation, widening of the distal radial ulnar joint and degenerative changes in the first carpometacarpal joint.

The petitioner was examined pursuant to Section 12 by Dr. Papierski on November 7, 2012. Dr. Papierski opined that petitioner's left shoulder and right elbow were not causally related to the injury of June 28, 2005, and were not due to overuse while petitioner worked modified duty. He opined that the petitioner had attained maximum medical improvement for her arms.

**FINDING REGARDING WHETHER THE PETITIONER'S ACCIDENT AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT:**

Based upon the testimony and the evidence submitted, the petitioner failed to prove that she sustained an accident on April 28, 2006, and May 19, 2006, arising out of and in the course of her employment with the respondent. The petitioner did not work for the respondent on April 28, 2006, and May 19, 2006, and did not provide sufficient evidence of traumatic injuries to her right elbow and left shoulder. Nor did she establish that she sustained repetitive injuries to her left shoulder or right wrist while working for the respondent. There is no evidence of any work activity with her right arm and no evidence of repetitive use of her left shoulder. Moreover, the petitioner's left shoulder pain started prior to her left-handed work in January 2006. She reported left shoulder pain

on December 7, 2005, and Dr. Rhode notes a positive impingement sign. The opinions of Dr. Rhode are conjecture and are not given any weight. All claims for benefits for the petitioner's left shoulder and right wrist are denied and claims #09 WC 13048 and #09 WC 13049 are dismissed.

**FINDINGS REGARDING WHETHER TIMELY NOTICE WAS GIVEN TO THE RESPONDENT:**

The petitioner failed to prove that the respondent received timely notice of her accidents on April 28, 2006, and May 19, 2006.

**FINDING REGARDING THE AMOUNT OF WAGES:**

From June 27, 2004, through June 26, 2005, the petitioner's regular earnings were \$31,971.12. There is no evidence as to the number of calendar workdays lost during that period in Respondent's Exhibit #2, however, since weeks three and eight contain eight hours or less those two weeks are deducted from her earnings leaving \$31,725.24 for fifty weeks. In the year preceding the injury on June 28, 2005, the petitioner's average weekly wage was \$634.50.

**FINDING REGARDING WHETHER THE MEDICAL SERVICES PROVIDED TO PETITIONER ARE REASONABLE AND NECESSARY:**

The medical care rendered the petitioner for her right shoulder was reasonable and necessary. The medical charges for the treatment of the petitioner's right elbow and left shoulder are not related to her work injury on June 28, 2005, and are denied. The medical charges of Loyola University Health System for treatment of her skin sores and cough are not related to her work injury on June 28, 2005, and are denied.



**FINDING REGARDING WHETHER THE PETITIONER'S PRESENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY:**

Based upon the testimony and the evidence submitted, the petitioner proved that her current condition of ill-being with her right shoulder is partially causally related to the work injury on June 28, 2005. The petitioner failed to prove that her current condition of ill-being with her right elbow and left shoulder is causally related to any work injury.

**FINDING REGARDING THE AMOUNT OF COMPENSATION DUE FOR TEMPORARY TOTAL DISABILITY:**

The respondent shall pay the petitioner temporary total disability benefits of \$423.00/week for 27-2/7 weeks, from November 28, 2005, through January 8, 2006, and from January 23, 2006, through June 20, 2006, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner. The petitioner's claim for temporary total disability benefits after June 20, 2006, is denied.

**FINDING REGARDING THE NATURE AND EXTENT OF INJURY:**

The petitioner had prior right shoulder injuries in 1991, 2003 and 2005 resulting in medical care. She received a settlement in 95 WC 41140 for an injury on July 31, 1995, of 40% of the right arm (94 weeks), 7 1/2% of the left arm (17.625 weeks), 15% of the right hand (28.5 weeks) and 7 1/2% of the left hand (14.25). The petitioner stopped working for the respondent in 2006 due to unrelated health issues and has not worked in any capacity since.

The petitioner complains that her right shoulder is weak and has a pinching feeling. She has difficulties with many activities. The respondent shall pay the petitioner the sum of \$380.70/week for a further period of 5 weeks, as provided in Section 8(d)2 of

**14IWCC0281**

the Act, because the injuries sustained caused the permanent partial disability to petitioner to the extent 1% loss of use of the person as a whole.

STATE OF ILLINOIS )

) SS.

COUNTY OF  
SANGAMON )☐ Affirm and adopt (no changes)☐ Affirm with changes☐ Reverse☒ Modify☐ Injured Workers' Benefit Fund (§4(d))☐ Rate Adjustment Fund (§8(g))☐ Second Injury Fund (§8(e)18)☐ PTD/Fatal denied☒ None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jessica Ratcliff,  
Petitioner,

vs.

NO: 11 WC 7084

**14IWCC0282**University of Illinois,  
Respondent.DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of permanency and credit for third party settlement and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission awards Respondent a credit in the amount of \$23,208.73 to reflect the deduction of \$1,791.27 to ACS Recovery medical bill under 5(b) and otherwise affirms the Arbitrator's decision.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$576.92 per week for a period of 113.85 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 45% loss of use of the right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent receive a credit in the amount of \$23,208.73 as a result of a third party recovery made by Petitioner and in accordance with Section 5(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0282

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 17 2014

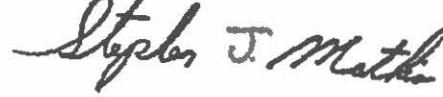
MB/jm

O: 2/27/14

43

   
\_\_\_\_\_  
Mario Basurto

  
\_\_\_\_\_  
David L. Gore

  
\_\_\_\_\_  
Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**RATCLIFF, JESSICA**

Employee/Petitioner

Case# 11WC007084

**14IWC0282**

**UNIVERSITY OF ILLINOIS**

Employer/Respondent

On 3/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1970 MEYER CAPEL PC  
ROCHELLE A FUNDERBURG  
306 W CHURCH ST  
CHAMPAIGN, IL 61826

0522 THOMAS MAMER & HAUGHEY LLP  
BRUCE E WARREN  
30 MAIN ST SUITE 500  
CHAMPAIGN, IL 61820



STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF SANGAMON )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION**

**JESSICA RATCLIFF**

Employee/Petitioner

Case # **11 WC 7084**

v.

Consolidated cases: \_\_\_\_\_

**UNIVERSITY OF ILLINOIS**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **March 4, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other: Is Respondent owed a credit for Petitioner's third party settlement recovery?

14IWCC0282

**FINDINGS**

On **05/20/2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$50,000.08**; the average weekly wage was **\$961.54**.

On the date of accident, Petitioner was **35** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$25,000.00** for other benefits, for a total credit of **\$25,000.00**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

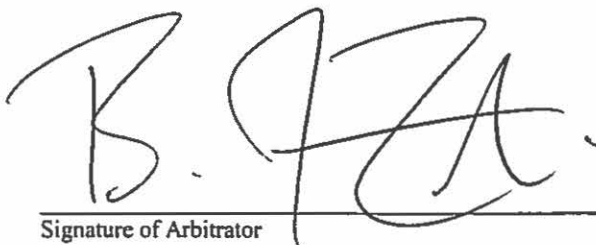
**ORDER**

Respondent shall pay Petitioner permanent partial disability benefits of **\$576.92/week** for **113.85** weeks, because the injuries sustained caused the **45%** loss of the right arm, as provided in Section 8(e) of the Act.

Respondent shall be given a credit of **\$25,000.00** against all benefits awarded herein as a result of a third party recovery made by Petitioner arising out of these same facts, pursuant to Section 5(b) of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

**03/20/2013**  
Date

**MAR 26 2013**

STATE OF ILLINOIS       )  
                                  )SS  
COUNTY OF SANGAMON    )

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

JESSICA RATCLIFF  
Employee/Petitioner

v.

Case # 11 WC 7084

UNIVERSITY OF ILLINOIS  
Employer/Respondent

**MEMORANDUM OF DECISION OF ARBITRATOR**

**FINDINGS OF FACT**

Petitioner, Jessica Ratcliff, was employed by Respondent, the University of Illinois, as a research fellow on May 20, 2010. On that date, she was traveling east on Interstate-74, on a trip for Respondent, when the driver in the next lane attempted an illegal u-turn, causing a rear end collision in which Petitioner's car hit the other driver. Petitioner's body was thrown about the car, resulting in broken bones in her right arm. Her husband accompanied her.

Petitioner was taken to Provena Covenant Hospital in Danville, Illinois, where she was treated in the emergency room. She was then transferred to the emergency room at Carle Foundation Hospital. Petitioner was seen by physicians in the emergency room. Dr. Robert Bane performed surgery on Petitioner on May 20, 2010, which consisted of an open reduction and internal fixation of the right proximal ulna. The pre-operative and post-operative diagnoses were comminuted right proximal ulna fracture and right radial neck fracture. Petitioner was discharged from the hospital on May 21, 2010, and advised to follow-up through the hand clinic in one week. (Petitioner's Exhibit (PX) 1; PX 2).

Petitioner was seen by Dr. Clifford Johnson, an orthopedic surgeon, on May 25, 2010. She was referred by Dr. Bane for evaluation and treatment of the radial neck. Petitioner was admitted to Carle Foundation Hospital on May 28, 2010 for the surgery performed by Dr. Johnson. That surgery

consisted of an open reduction and internal fixation of the right radial neck fracture. The pre-operative and post-operative diagnoses were right radial neck fracture as part of a Monteggia variant. Petitioner was discharged on May 28, 2010, after a splint had been applied. (PX 1; PX 2).

Petitioner then was referred for physical therapy, which she received at Carle. Occupational therapy was performed on an out-patient basis from June 7, 2010 through July 7, 2010. Petitioner also performed exercises at home during this period. She received the therapy at Carle one to two times per week for four weeks in order to control the edema or swelling, in an active range of motion, and to manage the scarring from the surgery. (PX 2).

As of July 7, 2010, Petitioner was still advised to wear her splint at all times, removing for hygiene purposes only, and to remove for the exercises regarding active range of motion. Additional treatment as of July 7, 2010 included active range of motion, elbow flexion and extension, forearm rotation and wrist flexion and extension. At that time, because Petitioner was moving to New York, her therapy was transferred to another facility. (PX 2). Petitioner then received therapy from Diane Farnham Physical Therapy and Massage in Ithaca, New York, and at Island Health and Fitness. (PX 4). Petitioner testified that in order to compensate for her inability to rotate and flex her forearm, she was developing problems with her right shoulder and neck.

Petitioner was seen by Dr. Eldridge Anderson and Dr. Kimberly Carney-Young in Ithaca, New York at the Orthopedic Services of CMA on September 17, 2010. At that time, she was also seeing a hand therapist at Island Health and Fitness. Petitioner's range of motion at this visit was noted to be 50 degrees of extension to 120 degrees. Her main complaint was lack of pronation and supination. She complained of pain in her wrist while wearing the splint. An examination of Petitioner's right upper arm showed a well healed incision on the posterior aspect of the elbow with a flexion extension arc of 15 to 120 degrees. Dr. Carney-Young measured supination and pronation, and it was 0 degrees through the forearm. Petitioner had approximately 7 degrees pronation and supination through the carpal bones.

Holding Petitoiner's forearm and attempting pronation and supination, Dr. Carney-Young noted no motion through the forearm. Dr. Carney-Young did get supination and pronation through the carpal bones. Petitioner had full flexion and extension of the wrist. (PX 3).

A review of Petitioner's x-rays on the September 17, 2010 evaluation with Dr. Carney-Young showed excellent placement of hardware on the radial neck as well as the proximal ulna. However, Dr. Carney-Young indicated that she had concern for a heterotopic bone formation between the radius and ulna in the area of the hardware. At that time, Dr. Carney-Young recommended a CT scan, and indicated that Petitioner might be a candidate for an "acinous into position flap" operation. Dr. Carney-Young indicated that such a procedure involves removal of the radial neck hardware, possible radial head excision if there is significant malunion or arthritis of the radial head followed by interposition of the anconeus muscle between the radius and the ulna, after removing all heterotopic bone. (PX 3).

Petitioner testified that she was told this surgery was in the experimental stages. Petitioner testified that because the surgery was experimental and she did not feel ready for yet a third surgery, she determined not to undergo the operation.

Petitioner testified at trial that she was unable to turn her arm outward, and that it causes significant difficulties with her work. Her work and research requires significant use of computers and typing, and she has been required to obtain some accommodations with the use of various computer equipment and voice activated equipment. She also testified that she has problems with her right shoulder and neck. In compensating for her limited range of motion in the arm, she has been using her neck and shoulder in a different way, causing pain and discomfort in those areas. Petitioner further testified that she travels frequently with her work to various historical archive locations, and such travel causes pain, especially with long drives. Petitioner also teaches and lectures, and noted that she feels awkward in gesturing due to her limited arm motion. Petitioner is now employed as an assistant professor at Yale-NUS College in Singapore.



Physical therapy with Diane Farnham indicated that as of August 18, 2011, Petitioner continued to have problems with the shoulder and neck stiffness and pain, although it had improved. At that time, the physical therapist recommended physical therapy on an as-needed basis for pain, discomfort and limited range of motion. The physical therapist recommended that any physical therapy should be designed to increase the range of motion, and to add comfort in the shoulder and neck area. (PX 4). Petitioner incurred \$580.00 in bills for the therapy services provided by Diane Farnham. (PX 5). Petitioner testified that she paid for those bills herself. The parties stipulated that Respondent would pay \$580.00 in reference to these bills paid by Petitioner. (See Arbitrator's Exhibit 1).

At trial, Petitioner testified that there are many activities that she cannot perform that she did prior to the accident, such as yoga and other sports activities, like bowling. She testified that it is difficult to perform all of her household duties, and that she frequently receives assistance from her husband. She does have pain from time to time, and takes over the counter medication on an as needed basis for that pain. If the pain endures for too long, she returns to Diane Farnham for massage therapy.

Petitioner has a scar from her two arm surgeries, which begin just above her right elbow going down to just above the wrist. There is some raised area and discoloration of the scar.

Petitioner testified that she made a recovery against the adverse driver involved in the accident in the total amount of \$25,000, before a lien was resolved. Respondent's Exhibit 1 is a letter dated October 11, 2011 from GEICO Insurance Company, the insurer of the adverse vehicle, setting out the amount of the settlement, indicating that a check would be issued to pay a lien in the amount of \$1,791.27, and that the balance of \$23,208.73 was issued to Petitioner and her husband. Petitioner confirmed receipt of this amount at trial. Petitioner testified that her husband was included since this was a "joint claim" including his "loss of consortium." Petitioner further testified that her husband's claim was "not physical." Petitioner testified that she was not assisted by an attorney in making the third party recovery.

## CONCLUSIONS OF LAW

**Issue (L): What is the nature and extent of the injury?**

The parties stipulated to Petitioner's work accident and that her current condition of ill-being is causally related to the work injury. Petitioner received two surgeries for fractures of the right ulna and radial head, consisting of an open reduction and internal fixation of the right proximal ulna, and an open reduction and internal fixation of the right radial neck fracture, respectively. The respective pre-operative and post-operative diagnoses regarding her two surgeries were comminuted right proximal ulna fracture and right radial neck fracture as part of a Monteggia variant. Petitioner received physical therapy over a period of time. A third surgery was suggested but Petitioner refused the surgery, indicating it was an experimental form of treatment which she did not desire. Therefore, Petitioner is at maximum medical improvement. Petitioner has a significant limitation of the range of motion of her right arm and elbow. As of September 17, 2010, Petitioner's range of motion was 50 degrees of extension to 120 degrees. Supination and pronation was 0 degrees through the forearm, with 7 degrees pronation and supination through the carpal bones. This limited range of motion affects her ability to perform her job, although she has obtained some accommodations through the use of various equipment. She is unable to engage in some physical activities she engaged in prior to the accident because of the condition of her right arm. She continues to experience pain in her arm, and compensating for her arm causes pain in her right shoulder and neck. Petitioner testified she cannot turn her arm outward, and this is confirmed in the medical records.

The Arbitrator has reviewed the medical records in this matter. Based upon those records and the credible testimony of Petitioner, the Arbitrator finds that Respondent should pay Petitioner permanent partial disability benefits of \$576.92 per week for 113.85 weeks, because the injuries sustained caused the 45% loss of use of the right arm, as provided in Section 8(e) of the Act.

**Issue (O): Is Respondent owed a credit for Petitioner's third party settlement recovery?**

The issue of whether Respondent is owed a credit for Petitioner's third party settlement recovery under Section 5(b) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") was raised at trial. The Supreme Court of Illinois stated in *Scott v. Industrial Comm'n*, 184 Ill.2d 202, 703 N.E.2d 81 (1998), that the Illinois Workers' Compensation Commission (hereafter the "Commission") has full authority to determine credits to which the respondent might be entitled as a result of a third party recovery by the petitioner, commenting in part as follows:

...the statute does not require an employer to intervene or to assert a lien in order to recover amounts obtained by an employee in a third party proceeding. When an employer does not assert a lien, the employer foregoes a means of enforcing its claim. The employer does not, however, forfeit its rights under the first paragraph of section 5(b) to recover amounts paid or to be paid to an employee where the employee has obtained a third-party judgment or settlement.

\*\*\*

We therefore believe that under section 5(b) of the Act, an employer may make a claim for credits following the conclusion of a third party proceeding without having obtained a lien in that proceeding.

\*\*\*

Were the rules to be otherwise, as suggested by Scott [the petitioner], an employee would be able to receive and retain a double recovery.

\*\*\*

Accordingly, we believe the Commission, which entered the original compensation award, is the proper place to determine whether an employer or its insurer is entitled to credits for amounts received by an employee in a third-party proceeding when lien rights have not been adjudicated by the circuit court.

*Scott*, 703 N.E.2d at 88 (citations omitted). See also *Selleck v. Industrial Comm'n*, 233 Ill. App. 3d 17, 19-20, 598 N.E.2d 443 (4th Dist. 1992).

In the case at bar, Petitioner recovered a total of \$25,000 in relation to her third-party claim. The fact that part of it was used to pay liens is not relevant to the determination of the credit pursuant to Section 5(b) of the Act. Additionally, the burden is on Petitioner to provide a record from which the Arbitrator could make a determination as to what portion, if any, of the paid amount may be

attributable to her husband's loss of consortium. Because Petitioner offered no evidence on that point, none of the recovery is apportioned to the husband. The burden of proof is on Petitioner to provide the Commission and any reviewing authority with a sufficient record from which to determine the amount of credit, if Petitioner disputes the amount involved. See *Padgett v. Industrial Comm'n*, 327 Ill. App. 3d 655, 661, 764 N.E.2d 125 (1st Dist. 2002).

Section 5(b) of the Act calls for a reduction in the employer's lien or credit by 25% to account for attorney's fees incurred by a petitioner in making the third-party recovery; however, those fees are to be paid only where said petitioner's attorney has substantially contributed to the recovery against the third-party. See *Dukes v J.I. Case Company*, 186 Ill. App. 3d 439, 542 N.E.2d 439 (4th Dist. 1989). Here, Petitioner testified that she was not assisted by an attorney in making the third-party recovery. Consequently, a reduction for attorney's fees is not applied under the facts.

Based on the foregoing, Respondent is awarded a credit of \$25,000 against all benefits awarded in this decision as a result of the third party recovery obtained by Petitioner.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF DUPAGE )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Clem,

Petitioner,

vs.

NO: 13 WC 00912

ALCA Carpentry,

Respondent,

**14IWCC0283**

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of maintenance, future maintenance, vocational rehabilitation, accommodation of restrictions and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 14, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0283

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 17 2014

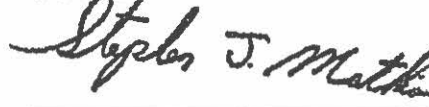
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O:3/6/14  
43



Mario Basurto



David L. Gore



Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**CLEM, ROBERT**

Employee/Petitioner

Case# **13WC000912**

**14IWCC0283**

**ALCA CARPENTRY**

Employer/Respondent

On 6/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1315 DWORKIN AND MACIARIELLO  
THOMAS GAYLE  
134 N LASALLE ST SUITE 1515  
CHICAGO, IL 60602

4285 CHRISTENSEN & EHRET LLP  
JOSEPH MULVEY  
135 N LASALLE ST SUITE 4200  
CHICAGO, IL 60603



14IWCC0283

STATE OF ILLINOIS )

)SS.

COUNTY OF Dupage )

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)

**Robert Clem**  
Employee/Petitioner

v.

**ALCA Carpentry**  
Employer/Respondent

Case # **13 WC 912**

Consolidated cases: **n/a**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carlson**, Arbitrator of the Commission, in the city of **Wheaton**, on **3/15/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☒ Maintenance      ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On the date of accident, **3/15/13**, Respondent *was* operating under and subject to the provisions of the Act.  
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.  
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.  
Timely notice of this accident *was* given to Respondent.  
Petitioner's current condition of ill-being *is* causally related to the accident.  
In the year preceding the injury, Petitioner earned **\$51920.66**; the average weekly wage was **\$1274.31**.  
On the date of accident, Petitioner was **51** years of age, *married* with **0** dependent children.  
Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.  
Respondent shall be given a credit of **\$67,270.62** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$67,270.62**.  
Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act.

## ORDER

Petitioner is entitled to TTD benefits from 11/29/11 to 1/28/13. Respondent has paid TTD from 11/29/11 to 1/28/13 and has a credit for \$67,270.62.  
Petitioner is entitled to ongoing maintenance benefits from 1/29/13 to 3/15/13 and continuing. Respondent shall pay to Petitioner Maintenance benefits from 1/29/13 – 3/15/13 representing 6 and 3/7 weeks at the rate of \$849.54 per week or \$5,461.27.  
Petitioner is in need of vocational assessment. Respondent shall provide vocational assistance under section 8a.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
\_\_\_\_\_  
Signature of Arbitrator

6.13.13  
Date

Robert Clem

v.

13wc000912

ALCA Carpentry

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**FINDINGS OF FACT:**

On 11/29/11 Robert Clem (Petitioner) was employed by and working for ALCA Carpentry (Respondent). On this date, while acting in the course and scope of his employment, Petitioner was in an accident that arose out of his employment with Respondent. Petitioner was moving a stack of plastic boarding, the wind blew the stack over, and the stack fell on Petitioner's left leg fracturing the left leg tibia and fibula bones. The fractures required surgical repair that included open reduction and internal fixation using plates and screws. The surgery was performed on 11/30/11. (PX 1). These facts are not in dispute.

Petitioner continued his medical care with Dr. Zussman of Rockford Orthopedics. On 1/3/12 Dr. Zussman recorded pain complaints of 9/10 at rest and 10/10 with activity and noted that it was at its worst when attempting to walk. (PX 2).

On 1/11/12 Accelerated Rehab Marengo (Accelerated) noted significant deficits in almost every category as well as significant pain complaints. (PX 4). On 3/1/12 Accelerated recorded ongoing deficits. (PX4).

Petitioner again saw Dr. Zussman on 3/2/12 and physical deficits and pain complaints continued. (PX 2). The 3/2/12 chart note includes a specific discussion about Petitioner's driving. (PX 2). It was noted that prior to his injury Petitioner was a "two footed driver" meaning that he used his left foot for braking and right foot for acceleration. (PX 2). Dr. Zussman recorded that he felt that Petitioner "is unable to drive." (PX 2).

At hearing Petitioner testified that prior to his accident his usual way of driving was "left-footed driver." (TX p. 58-59). He described that this meant that he used the left foot for the brake and the right foot for the gas. He has not driven since the accident. (ID).

On 4/12/12 Accelerated reported that Petitioner was having difficulty sleeping, transferring in and out of bathtub, inability to walk independently, noted that he was using a two wheeled walker for ambulation, and noted that he had been compliant with therapy visits. (PX 4).

On 4/17/12 Dr. Zussman recommended ongoing therapy followed by FCE. (PX 2).

On 5/1/12 Accelerated reported that Petitioner had continued difficulty with sleeping, transferring from bathtub, inability to walk independently on uneven surfaces, and that he was using his two wheeled walker on his right side when walking. (PX 4). On the same day, Accelerated Rehab contacted Sports Physical Therapy and Rehab Specialists to make a Durable Medical Equipment Authorization Request of "1x Quad Cane. Dx/Body Part: L tibia fx." (PX4). Petitioner affirmed that he received the quad cane from Accelerated Rehab. (TX p. 9-10).

On 5/23/12 Petitioner saw his primary care physician, Dr. Glantsman of Cordial Medical Center. (PX 5). Dr. Glantsman noted that Petitioner's left leg was longer than his right. (PX 5). Petitioner was using his quad cane at this visit. (PX 5, TX p. 10).

On 5/31/12 Accelerated again noted deficits. (PX 4).

On 6/12/12 Dr. Zussman continued to note that Petitioner had pain, numbness, tingling, coldness in the foot, popping, and clicking. (PX 2). Pain at rest was 7/10 and with activity 8/10. (PX 2). The doctor noted that "his gait is improved when he walks with a quad cane in his right hand." (PX 2). Dr. Zussman referred Petitioner to Dr. Borchardt, within the same practice, citing "continued numbness and tingling and pain." (PX 2).

14IWC0283

On 6/14/12 Dr. Borchardt noted pain complaints 7/10 at rest and 9/10 with activity. (PX 2). He noted that Petitioner ambulates with cane. (PX 2). Dr. Borchardt's physical evaluation revealed: "still shows atrophy of his distal quadriceps and calf muscles on the left leg." (PX 2). Dr. Borchardt recorded that "Patient continues to use a cane when walking. He needs to *start* using his cane." (PX 2 emphasis added). Petitioner testified that Dr. Borchardt did not tell him to discontinue use of cane. (TX p. 10-11).

On 7/17/12 Accelerated performed an FCE. (PX 4). The FCE revealed that he was unable to perform 100% of the physical demands of his job as a carpenter per dictionary of occupational titles. (PX 4). Additionally, the FCE reviewed the job requirements as provided by Respondent as part of the examination. (PX 4). The FCE limits Petitioner to bilateral lifting up to 40 pounds with only 15 pounds frequently, bilateral carrying up to 35 pounds, bilateral shoulder lifting 30 pounds, pushing and pulling horizontal plane 35 pounds. (PX 4). When assessing the job requirements provided by Respondent the FCE notes that the Petitioner was not capable of the required frequent walking, frequent stair climbing, frequent static balancing, and frequent dynamic balancing. (PX 4). Within the report of FCE, it is further noted that Petitioner reported ongoing difficulty sleeping, inability to walk independently on uneven surfaces, and difficulty climbing stairs. (PX4).

On 7/19/12 Dr. Borchardt recorded Petitioner's ongoing feeling of coldness and soreness from the knee down, pain 7/10 at rest and 8/10 with activity, and new popping and swelling. (PX 2). Dr. Borchardt released Petitioner MMI with restrictions pursuant to the FCE. (PX 2).

Petitioner followed up with Dr. Glantsman on 8/17/12. (PX 5). The doctor advised Petitioner that he could not return to his usual job and may need to go for disability. (PX 5). Dr.

Glantsman notes that Petitioner walks with a cane, reports pain in leg after a "short walk," and that the leg feels cold below the knee. (PX 5).

On 9/5/12 Petitioner saw IME Dr. Shadid at the request of Respondent. (PX 6). The complete subpoenaed record from Dr. Shadid was entered at hearing as Petitioner's exhibit 6.

IME Dr. Shadid noted that Petitioner used a cane. He noted that the left lower leg showed some atrophy. He noted that one leg was shorter than the other. He noted that Petitioner could ambulate without cane. He noted that Petitioner could toe walk and heel walk without cane. Dr. Shadid concluded that *"Yes, he can return to light duty. A separate report will be attached to this, which specifies the level of light duty. Essentially, he is capable of medium level activities."* (PX 6 emphasis added). It is noted that Dr. Shadid did not attach any "separate report" as evidenced by the subpoenaed medical records. (PX6). IME Dr. Shadid released Petitioner MMI per FCE. (ID).

Petitioner again saw Dr. Glantsman on 11/13/12 where it was noted that Petitioner was not working due to disability. (PX 5). It is also noted that the left lower leg has hardware producing a bump in the skin of the leg, and that his leg gets cold. (PX 5). Petitioner testified that Dr. Glantsman did not tell him to discontinue use of cane. (TX p. 13-14).

Petitioner testified that in January 2013 he was continuing to have numbness and cold about his left leg and was experiencing pain 8 to 9/10. (TX p. 14).

Respondent discontinued Petitioner's maintenance benefits 1/29/13. (Arb Ex. 1).

Petitioner testified that he received a letter from Respondent in January 2013. (TX p. 15). The letter indicated a start date of 1/30/13 but goes on to say "Please contact Greg Carpenter for job location and start date." (RX 1).



Petitioner testified that he called Greg Carpenter in January 2013. (TX p. 15-17). (NOTE: Greg Carpenter is a managing employee of Respondent ALCA and is a party opponent who Respondent chose not to call to testify, and there is no evidence that he was unavailable).

Petitioner testified that Greg Carpenter told him that there was light duty work but did not tell him when or where to report to and Greg Carpenter ended the call because Petitioner had an attorney. (TX p. 15-17).

Petitioner testified that following this call he continued to call Greg Carpenter and David Pasquinelli, the owner of ALCA, to obtain information about returning to work. (TX p. 17-18). (NOTE: David Pasquinelli is an owner of Respondent ALCA and is a party opponent who Respondent chose not to call to testify, and there is no evidence that he was unavailable).

Petitioner testified that he continued to call Greg Carpenter and David Pasquinelli in February two times per day for two weeks with no return calls. (TX p. 18).

Petitioner testified that approximately 3/7/13 or 3/8/13 he was advised that ALCA wanted him to return to work 3/13/13. (TX p. 18).

On 3/13/13 Petitioner reported to work at ALCA around 8AM. (TX p. 19). He was first greeted by David Pasquinelli. (TX p. 19). He was then greeted by Greg Carpenter and was shown to his work space in the warehouse and was given a circular saw to "rip" plywood (cut plywood into long strips). (TX p. 20-21).

Petitioner testified that at his work station he was performing the saw cuts as requested. (TX p. 21). He testified that when making the saw cuts he would put his cane down and that he would "put his arm on the plywood, and it helped the weight on the left arm and pushed the saw." (TX p. 21). He would use his cane to walk around to the other side of the work area where he would put his cane down and perform more saw cuts. (TX p. 21-22).



He performed these duties for an hour to an hour and twenty minutes. (TX p. 23). Greg Carpenter then approached him and said to Petitioner "come into the lunchroom and sit down and take a break." (TX p. 23). In the lunch room David Pasquinelli said to Petitioner that **"this is a shame, and that they should turn this man's money loose and give it back to him because he is not able to work."** (TX p. 24-26).

Petitioner was then told to call his wife to pick him up. (TX p. 26).

When Petitioner was picked up by his wife he walked to the van and was again approached by David Pasquinelli. (TX p. 27). At the van David Pasquinelli told Petitioner, "call him Friday if I haven't got a check yet." (TX p. 27). Petitioner then left with his wife and mother in law. (TX p. 28). During the entire time that he was at ALCA on 3/18/13 David Pasquinelli never once mentioned the use of a cane to Petitioner. (TX p. 28).

Petitioner testified that as of the day of hearing, 3/15/13, and during the weeks preceding hearing, he experienced pain and coldness about his leg and that it wakes him up in the middle of the night three times per week. (TX p. 29-30). He testified that when he stands without his cane his legs start to shake because he is putting weight on his right leg to compensate for his left leg and he starts shaking. (TX p. 30). No doctor ever told him to discontinue use of his cane. (TX p. 32).

On cross examination Respondent's counsel questioned Petitioner with regard to what Greg Carpenter told him in the January 2013 telephone call. (TX p. 42). Petitioner testified that he never told anyone at ALCA that he was "forced" to use a cane. (TX p. 43). Petitioner testified that Greg Carpenter talked to him about "sandentation [SIC] work" (later described to be sedentary sitting work). (TX p.47). Respondent then asked if Petitioner told Greg Carpenter that he was not able to drive and Petitioner answered that the doctor told him not to drive at that time

because of medications. (TX p. 47-48). On Redirect Petitioner explained that he told Greg Carpenter that he couldn't drive but that he could get there. (TX p. 58).

The issue of driving was again raised on re-cross examination and Respondent asked: "Q: Mr. Carpenter offered you sedentary work in January and you did not accept it, correct? A: Yes, I will tell you why..." but further answer was not allowed. (TX p. 63). On re-direct examination immediately thereafter, Petitioner testified that the reason why he did not accept the sedentary work in January was that he "talked to Diane Reznick, she was my comp nurse, and she said at the time, that the medication that I was taking that I couldn't go down there and sit four hours at a time, or whatever they wanted me to do. She said I didn't have to do that. That was coming from the comp nurse." (TX p. 64). Diane Reznick was a nurse case manager retained by Respondent and Respondent did not call her to testify. (TX p. 64).

The Arbitrator noted viewing Petitioner's lower extremities. (TX p. 64-67). It was noted that Petitioner wore long underwear and that that it was 43 degrees outside. (ID). Petitioner testified that it was because his leg stays cold. (ID). It was also noted that the left leg was visibly smaller than the right leg and that the hardware was visible. (ID). The bottom of Petitioner's cane was viewed and it was noted to be fairly worn. (ID). It was further noted that Petitioner had been working as a carpenter since age 15, was originally from Kentucky, and did not finish high school. (TX p. 72).

Petitioner then called Kimberly Clem to testify. (TX p. 75). Kimberly Clem was not present during Petitioner's testimony. (ID). She is Petitioner's wife. She drove Petitioner to court on 3/15/13 and had driven Petitioner to ALCA for work on 3/13/13. (TX p. 76).

When she picked Petitioner up at ALCA on 3/13/13 Petitioner and David Pasquinelli were speaking beside the van and she heard David Pasquinelli say "be sure to call him by Friday if he hadn't got any money yet." (TX p. 78-79).

Kimberly Clem also testified that the next day, 3/14/13, she had a telephone conversation with David Pasquinelli. (TX p. 79). She answered David Pasquinelli's telephone call and told him that Petitioner was laying down. (ID). She testified that David Pasquinelli then told her "**he called AIG and that they [AIG] had to let this go... and he said Robert wasn't able to work, he is seeing him, he watched him, he saw the pain he was in.**" (TX p. 80, emphasis added).

**CONCLUSIONS OF LAW:**

**I. Petitioner's condition of ill-being is causally connected to this injury:**

The above findings of fact are included herein by reference. The Arbitrator concludes that Petitioner's current condition of ill-being, and the associated physical limitations, are causally related to the 11/29/11 accident.

The credible medical evidence reveals that Petitioner suffered a fractured tibia and fibula which required open reduction and internal fixation using plates and screws. The medical records contain consistent histories, diagnoses, and treatments. The records of Dr. Zussman, Dr. Borchardt, and Dr. Glantsman, as well as physical therapy, consistently document ongoing severe pain about the affected leg ranging from 7/10 at rest to 9/10 at rest and 8/10 active to 9/10 active. The medical records consistently document Petitioner's difficulty ambulating and other functional deficits. The records consistently document left leg atrophy along with numbness and tingling,

Furthermore, the Arbitrator took judicial notice that Petitioner's left leg revealed atrophy and visible hardware protruding beneath the skin.

The Arbitrator concludes that Petitioner's condition of ill-being is causally connected to the 11/29/11 accident.

The credible medical evidence reveals that Petitioner underwent an FCE showing that Petitioner cannot perform 100% of his job duties as a carpenter. The physical restrictions of bilateral lifting up to 40 pounds with only 15 pounds frequently, bilateral carrying up to 35 pounds, bilateral shoulder lifting 30 pounds, pushing and pulling horizontal plane 35 pounds. (PX 4). The FCE assessed the job duties as described by Respondent and noted additionally that Petitioner was not capable of the required frequent walking, frequent stair climbing, frequent static balancing, and frequent dynamic balancing. (PX 4). The report of FCE further noted Petitioner's ongoing complaints of difficulty sleeping, inability to walk independently on uneven surfaces, and difficulty climbing stairs. (PX4).

The Arbitrator concludes that Petitioner's physical restrictions are causally connected to the 11/29/11 accident.

**II: Petitioner is entitled to maintenance benefits from 1/29/13 to the date hearing and ongoing:**

The above findings of fact and conclusions of law are incorporated herein by reference. The Arbitrator concludes that Petitioner is entitled additional maintenance benefits from 1/29/13 to the date of hearing and ongoing. Petitioner has reached maximum medical improvement, cannot return to his prior occupation, has not been provided an accommodated position with Respondent, is in clear need of vocational assistance, and is currently off of work.

Dr. Borchardt deemed Petitioner maximum medical improvement and gave him permanent restrictions pursuant to FCE. The credible medical evidence reveals that Petitioner underwent an FCE showing that he cannot perform 100% of his job duties as a carpenter.

Furthermore he has physical restrictions of bilateral lifting up to 40 pounds with only 15 pounds frequently, bilateral carrying up to 35 pounds, bilateral shoulder lifting 30 pounds, pushing and pulling horizontal plane 35 pounds. (PX 4). When addressing the physical requirements of the job as presented by Respondent, additional limitations are noted to include no frequent walking, no frequent stair climbing, no frequent static balancing, and no frequent dynamic balancing. (PX 4). The FCE recorded Petitioner's complaints of ongoing difficulty sleeping, inability to walk independently on uneven surfaces, and difficulty climbing stairs. (PX4).

Based on the FCE the Arbitrator concludes that Petitioner cannot return to his prior occupation as a carpenter.

It is additionally noted that the opinions contained in the report of IME Dr. Shadid are rejected as the report lacks elements of reliability. The report refers to "light duty" then refers to an attached "separate report." However the report does not have an attached "separate report" as evidenced by the subpoenaed medical records. (PX6). Furthermore, the IME Dr. Shadid reports that Petitioner can ambulate without a cane but does not say for how long or for how far. He reports that Petitioner can heel toe walk without cane but does not say for how long or how far. Dr. Shadid lists the medical records that he reviewed in conjunction with his examination and he did not review the FCE from Accelerated Rehab. (PX 6). Throughout the entire set of the subpoenaed medical records of IME Dr. Shadid, there is no mention of FCE results nor is there any indication that he knew what Petitioner's occupation was or what light duty may have been available. (PX 6). The opinion's of Dr. Shadid are rejected because they are not reliable.

The Arbitrator concludes that Respondent has not offered a legitimate light duty accommodation of Petitioner's restrictions. Respondent purports to have offered a light duty position to Petitioner in January 2013. The letter that Respondent sent to Petitioner offering light

duty gave a start date but no location. Instead of giving a location the letter specifically states “contact Greg Carpenter for job location and start date.”

Petitioner did as requested and called Greg Carpenter for the location and start date of the accommodation. Petitioner spoke with Greg Carpenter and indicated that he could not drive but could get to work. Greg Carpenter responded that Petitioner should contact his lawyer and did not give a location and time for the beginning of the accommodation. Respondent presented no rebuttal testimony. Petitioner then continued to call Greg Carpenter and David Pasquinelli twice per day for two weeks in early February 2013 without any response and was not told a location and start date for the accommodation. Respondent presented no rebuttal testimony.

Regardless of whether there is a prescribed restriction to refrain from driving or not, Respondent failed to effectuate an accommodation of Petitioner’s restrictions at in January 2013 because they failed to provide the location of his accommodated work despite having spoken with Petitioner. Respondent presented no rebuttal evidence in this regard. The Arbitrator concludes that there was no legitimate offer of light duty in January 2013.

The next offer of accommodated work was for Petitioner to work at ALCA light duty on 3/13/13. Petitioner appeared and performed the duties that he was asked to perform for an hour and twenty minutes. Respondent ordered Petitioner to stop this light duty accommodation and brought him to the lunch room. In the lunch room David Pasquinelli said to Petitioner that **“this is a shame, and that [AIG] should turn [Petitioner’s] money loose and give it back to [Petitioner] because he is not able to work.”** (TX p. 24-26). David Pasquinelli went on to tell Petitioner’s wife Kimberly the next day, 3/14/13, that **“he called AIG and that [AIG] had to let this go... and he said [Petitioner] wasn’t able to work, he is seeing him, he watched him, he saw the pain he was in.”** (TX p. 79-80, emphasis added).

Respondent objected to the testimony of Petitioner and Petitioner's wife with regards to what David Pasquinelli had said. It is undisputed that David Pasquinelli is the owner of ALCA, the Respondent, and is thus a party opponent. The Arbitrator concludes that overruling these objections was clearly supported by the law as the statements were statements of a party opponent. David Pasquinelli did not choose to testify to rebut these statements. Given that Petitioner and Witness Kimberly Clem testified credibly, the statements with regards to what David Pasquinelli had said are credible and reliable facts.

Furthermore, the Arbitrator observed Petitioner throughout two hours of testimony and specifically notes that Petitioner did not exhibit any signs of evasiveness, dishonesty, or unreliability. He presented at all times as a credible witness. The Arbitrator concludes that Petitioner testified credibly.

Witness Kimberly Clem was also observed during testimony and did not exhibit signs of evasiveness, dishonesty, or unreliability. The Arbitrator concludes that witness Kimberly Clem testified credibly.

Given that Respondent, David Pasquinelli, told Petitioner that Petitioner was not able to work, then the next day told Petitioner's wife that Petitioner was not able to work based on him watching him, and that Respondent presented no rebuttal to these statements, it is clear that Respondent cannot accommodate Petitioner's restrictions.

The Arbitrator concludes that Respondent cannot accommodate Petitioner's restrictions and that Respondent failed to present any evidence to the contrary. Furthermore, The Arbitrator concludes that Respondent did not assert that the use of a cane or the inability to drive had any relevance with regard to Respondent not being able to accommodate Petitioner's restrictions. Respondent presented no evidence or testimony to the contrary.



Notwithstanding these conclusions, the Arbitrator notes very convincing evidence that Petitioner in fact cannot drive. His treating physician Dr. Zussman on 3/2/12 notes that Petitioner drives with both feet, left on the brake and right on the accelerator, and that "he is unable to drive." No medical provider ever reverses this recommendation or addresses his ability to drive. Given the physical deficits that are recorded in the medical records subsequent to this physician note and the testimony presented at hearing, it is more likely than not that Petitioner remains unable to drive.

With regards to the use of a cane, the Arbitrator notes very convincing evidence that Petitioner in fact requires the use of a cane to ambulate. All medical records presented at hearing document difficulty and pain about the left lower extremity and there are ample reports of difficulty ambulating. The FCE specifically refers to problems with frequent balancing and with frequent dynamic balancing. The report further notes pain with walking. Petitioner testified credibly that he requires a cane to ambulate and that he cannot stand without his legs shaking if he does not use a cane.

The cane was obtained through Petitioner's physical therapy by a formal durable medical equipment requisition. Each provider noted that he used a quad cane to ambulate and none of the providers told him to discontinue use. The chart note of Dr. Borchardt on 6/14/12 indicates that Petitioner "is using his cane" and should "start" using his cane. This presents a possible dictation error. The correct dictation could be that *he is not using his can and should start using his cane*, or it could be that *he is using his cane and should stop using his cane*. However, conclusions cannot be based on speculation or conjecture and the speculation of a potential error cannot be injected into the decision making process. It is concluded that this record is **not** an affirmative

order to discontinue use of the cane. There is thus no credible evidence that Petitioner was ordered to discontinue use of his cane.

The Arbitrator concludes that the only occupational experience that Petitioner has had since age 15 has been carpentry, that he has no high school education, that he is 52 years of age, and that he has physical restrictions preventing him from returning to his prior occupation, and it is thus clear that Petitioner is in need of vocational services.

Finally, The Arbitrator concludes that Petitioner has not worked since the accident other than one hour and twenty minutes on 3/13/13 before Respondent ended his light duty accommodation, and it is thus clear that Petitioner is currently off work.

For these reasons the Arbitrator concludes that Petitioner is entitled to continuing maintenance benefits. Respondent shall reinstate the payment of benefits from 1/29/13 to the date of hearing and ongoing.

STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Marek Chmiel,  
Petitioner,

vs.

GILCO Scaffolding,  
Respondent,

NO: 10 WC 10101

**14IWCC0284**DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of permanent partial disability, causal connection and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$39,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 17 2014

MB/mam

O:3/6/14

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 Mario Basurto

  
 David L. Gore

  
 Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**CHMIEL, MAREK**

Employee/Petitioner

Case# **10WC010101**

**14IWCC0284**

**GILCO SCAFFOLDING**

Employer/Respondent

On 6/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1836 RAYMOND M SIMARD PC  
221 N LASALLE ST  
SUITE 1410  
CHICAGO, IL 60601

2542 BRYCE DOWNEY & LENKOV LLC  
EDWARD A JORDAN  
200 N LASALLE ST SUITE 2700  
CHICAGO, IL 60601

14IWCC0284

STATE OF ILLINOIS

)

)SS.

COUNTY OF Cook

)

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**Marek Chmiel**

Employee/Petitioner

v.

**Gilco Scaffolding**

Employer/Respondent

Case # 10 WC 10101

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **May 29, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On **12/14/09**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$72,618.52**; the average weekly wage was **\$1,396.51**.

On the date of accident, Petitioner was **32** years of age, *married* with **1** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services and medical bills have been fully paid.

Respondent shall be given a credit of **\$2,394.02** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and \$ for other benefits, for a total credit of **\$2,394.02**, **however, no additional TTD is claimed.**

Respondent is entitled to a credit of **\$0.00** under Section 8(j) of the Act.

## ORDER

*Respondent shall pay Petitioner permanent partial disability benefits of \$664.72 /week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.*

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

David G. Wonne  
Signature of Arbitrator

June 6, 2013  
Date

JUN 6 - 2013

Marek Chmiel v. Gilco Scaffolding

10 WC 10101

Addendum to Arbitrator's Decision

Statement of Facts:

This matter proceeded to hearing on May 29, 2013 on the issues of causal connection and the nature and extent of Petitioner's injuries. Petitioner's claim was previously tried pursuant to Section 19(b) and 8(a) on July 29, 2011 before Arbitrator Kurt Carlson of the Illinois Workers' Compensation Commission and appealed to the Illinois Workers' Compensation Commission. In its decision and opinion on review, the Commission affirmed Arbitrator Carlson's findings that Petitioner failed to prove surgery was necessary, Respondent was liable to pay Petitioner outstanding medical bills and Petitioner's average weekly wage was \$1,396.51 pursuant to Section 10. The Commission modified Arbitrator Carlson's decision as to causal connection, finding Petitioner's current condition of ill-being regarding his lumbar spine to be related to the injury sustained on December 14, 2009. There were no further appeals taken by the parties following the Commission's decision.

The matter was then remanded to the Arbitrator for a determination of a further amount of temporary total compensation or compensation for permanent disability.



The parties stipulated Petitioner sustained injuries to his lumbar spine on December 14, 2009 while working for Respondent.

The parties also stipulated that all medical bills and TTD benefits have been paid by Respondent.

A detailed statement of facts is contained the Decision and Opinion on Review and the Arbitrator adopts this statement of facts regarding the findings of the Illinois Workers' Compensation Commission.

Petitioner testified he continues to work in a light duty job for Respondent as a salesperson. Prior to his injuries, he was employed by Respondent as a laborer/scaffold builder and foreman.

He testified that he currently earns \$37.05 per hour plus benefits in his position as a salesperson. At the time of the injury, Petitioner earned \$35.60 per hour and at the time of the prior hearing earned \$36.05 per hour. The wage records entered by Respondent show Petitioner continues to earn \$37.05 per hour from Respondent. (Rx. 2) In addition, Petitioner testified he receives \$500.00 per month from Respondent in mileage reimbursement for his travel.

Petitioner testified that his position as a salesperson includes a lot of driving and traveling to jobsites in order to develop proposals for Respondent. His job includes selling scaffolding jobs and he testified he drives approximately 2,500 miles per month.

Following the prior hearing, Petitioner returned to Dr. Citow on December 2, 2011 complaining of a progression of his back through both his legs. Dr. Citow's medical records indicate Petitioner complained of numbness, weakness and parasthesias into his legs. An updated MRI of his lumbar spine was recommended. (Px. 1) Petitioner testified he returned to see Dr. Citow because he was feeling worse and was having pain and problems exiting his car and walking.

On December 2, 2011 Petitioner underwent a lumbar MRI. (Px. 1) The impression noted on the MRI report was multilevel degenerative change, degenerative disc disease and annular tears at each level from L2-L3 to L5-S1. (Px. 1)

Petitioner returned to Dr. Citow on February 20, 2013 (Px. 1). The records indicate Petitioner continued to complain of back pain, however, Dr. Citow's records indicate Petitioner had full range of motion of his lumbar spine. (Px. 1). Dr. Citow recommended an updated MRI, continued to prescribe ibuprofen and prescribed Mobic. (Px. 1). Dr. Citow also instructed Petitioner to follow up as needed. (Px. 1).

Petitioner underwent a MRI of his lumbar spine on February 21, 2013 which showed diffuse disc bulging at L2-L3, L3-4, L4-L5 and L5-S1 with no change reported in spondylosis. (Px. 1).

Petitioner testified he has not returned to see Dr. Citow since his visit on February 20, 2013. Since the last hearing, Petitioner testified he has not undergone any additional

physical therapy, functional capacity evaluations or had any injections to his lumbar spine. He testified that he only takes prescription Mobic and no other medications for his back pain.

Respondent entered an addendum records review report from Dr. Salehi dated May 16, 2013, a board-certified neurosurgeon and former Assistant Professor of Neurosurgery at Northwestern University. (Rx. 1). Dr. Salehi's report indicates he reviewed the updated medical records of Dr. Citow and the actual MRI films from December 2, 2011 and February 21, 2013. (Rx. 1). Dr. Salehi noted the MRI films from February 21<sup>st</sup> showed four level disc disease in the lumbar spine from L2-L3 to L5-S1. (Rx. 1). However, he also opined that these findings were unchanged from the prior MRI films reviewed. (Rx. 1). Dr. Salehi stated Petitioner did not require any surgery or medical treatment for his injuries and his other opinions made in his prior IME reports were unchanged. (Rx. 1).

Petitioner testified that sitting in his car during his workday causes increased pain and numbness in his legs. He still complains of pain in the lower back that travels down to his left leg and foot and right buttock. Petitioner testified he can't do activities with his children, can't complete projects on his home and can't run or engage in sports.

**With regard to issue "F", is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:**

The Arbitrator finds Petitioner's current condition of ill-being regarding his lumbar spine to be causally related to his injuries sustained on December 14, 2009. There is no dispute Petitioner sustained injuries to his lumbar spine. The medical records and reports introduced into evidence support a finding that Petitioner's current condition of ill-being regarding his lumbar spine is causally related to the injury.

**With regard to issue "L", what is the nature and extent of the injury, the Arbitrator finds as follows:**

Petitioner sustained an injury to his lumbar spine as a result of a lifting accident while working for Respondent. The Decision and Opinion on Review of the Illinois Workers' Compensation dated August 7, 2012 found that Petitioner sustained a L4-L5 herniated disc as a result of the accident. The medical records show Petitioner sustained a herniated disc and multi-level disc bulges, however, Petitioner is not a surgical candidate and the Commission made a factual finding that Petitioner failed to prove that surgery was necessary medical treatment. The Arbitrator finds the issue of whether Petitioner requires surgery to have been decided by the Illinois Workers' Compensation Commission and no additional evidence was taken at Arbitration on this issue.

The parties agree Petitioner requires permanent work restrictions which required him to change professions from a laborer/scaffold builder and foreman to a salesperson.

According to the Commission Decision, Petitioner underwent at FCE which placed him within the "medium" physical demand level and capable of lifting up to 53 pounds occasionally.

However, despite this change of jobs following the accident, the Arbitrator gives significant weight to Petitioner's testimony and the wage records introduced by Respondent, which show Petitioner is actually earning a higher salary in his current position than at the time of the accident. While Petitioner's injuries have forced him to have permanent work restrictions, these restrictions have not caused a reduction in his earning capacity. Petitioner has failed to prove or introduce any evidence to show any loss of future earning capacity as the wage records show his hourly wage has continued to increase since his accident.

Regarding his complaints, Petitioner continues to complain of back pain and radiation of pain to his left leg and right buttock. He testified he experiences pain while driving during his workday, but is able to complete his work duties. Petitioner only requires prescription Mobic and has only treated with Dr. Citow twice since the last hearing.

Based upon the foregoing evidence brought forward at the time of the hearing and the prior Commission Decision, as to the issue of nature and extent, the Arbitrator finds Petitioner has sustained a 12.5% loss of use of the person as a whole

**14IWCC0284**

pursuant to Section 8(d)(2) of the Illinois Workers'  
Compensation Act.

STATE OF ILLINOIS

)

) SS.

COUNTY OF  
WILLIAMSON

)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify <input type="text" value="Choose direction"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carolyn Craig,

Petitioner,

vs.

NO: 11 WC 21087

**14IWCC0285**

General Dynamics,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, the nature and extent of Petitioner's disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 14, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.



14IWCC0285

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:  
TJT:yl  
o 2/25/14  
51

APR 17 2014

  
Thomas J. Tyrnell

  
Daniel R. Donohoo

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**CRAIG, CAROLYN**

Employee/Petitioner

Case# **11WC021087**

**GENERAL DYNAMICS**

Employer/Respondent

141WCC0285

On 3/14/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1167 WOMICK LAW FIRM CHTD  
CASEY VANWINKLE  
501 RUSHING DR  
HERRIN, IL 62948

0299 KEEFE & DEPAULI PC  
JAMES K KEEFE JR  
#2 EXECUTIVE DR  
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS )

)SS.

COUNTY OF Williamson )

14IWCC0285

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(e)(18))        |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION**

**Carolyn Craig**

Employee/Petitioner

v.

**General Dynamics**

Employer/Respondent

Case # 11 WC 21087

Consolidated cases:       

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **2/13/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

## FINDINGS

On 3/29/11, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$20,309.73; the average weekly wage was \$700.34.

On the date of accident, Petitioner was 62 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$11,424.24 for other benefits, for a total credit of \$11,424.24.

Respondent is entitled to a credit of \$ under Section 8(j) of the Act.

## ORDER

*Petitioner failed to meet her burden of proof regarding the issues of accident and causation. Therefore, the claim is denied.*

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

3/7/13  
Date

MAR 14 2013

### Findings of Fact

Petitioner claims she sustained a repetitive trauma injury to her right shoulder working for Respondent. Respondent disputes the claim on accident, causation, medical bills, TTD benefits and the nature and extent of the injury.

On March 29, 2011, Petitioner was 62 years of age. She had worked for Respondent 16 years as an MCA Operator and her current department for 6-7 years.

Petitioner testified she arrived home after work the evening of March 29, 2011, and developed pain in her right shoulder when eating dinner. The symptoms worsened throughout the evening and she reported it to the nurse at work the following day. Petitioner denied experiencing any previous symptoms in her right shoulder at work. She also denied any symptoms in her left arm. Her job duties require her to use both arms at work.

On April 8, 2011, Petitioner came under the care of Dr. Joon Ahn. She related her condition to a lot of repetitive overhead activity, pulling, pushing and lifting. She told Dr. Ahn her work table was 60 inches high. Dr. Ahn diagnosed possible rotator cuff tear. He provided an injection and put Petitioner on light duty.

Respondent sent Petitioner to Dr. George Paletta for an independent medical examination on April 25, 2011. Petitioner reported that her job involved handling, loading and unloading ammunition. She did not describe any specific injury or overhead work. Petitioner related her symptoms to doing stretching exercises before work. Dr. Paletta diagnosed AC joint irritation and subacromial impingement. He recommended an AC joint injection and light duty. Dr. Paletta opined that a medical causal relationship did not exist between the condition and work activities. Dr. Paletta prepared addendum reports on December 22, 2011 and February 14, 2012 following review of a job description, job video and additional medical records. Dr. Paletta's opinion remained a medical causal relationship did not exist between Petitioner's right shoulder condition and work activities.

Petitioner worked light duty until May 19, 2011. She admitted her right shoulder symptoms continued to worsen. She returned to Dr. Ahn who ultimately performed a rotator cuff repair, subacromial decompression and biceps tenotomy on July 26, 2011. (Px. 1). Secondary to post-operative pain and adhesive capsulitis, Dr. Ahn on November 15, 2011 performed a distal clavicle resection and lysis of adhesions. (Px. 1). Dr. Ahn kept Petitioner off work from May 19, 2011 through February 5, 2012. Petitioner received \$11,424.24 in short term disability benefits during this period.

Petitioner described four different areas she worked on a daily basis. She generally worked in each area an equal amount of time, rotating approximately every one hour. Petitioner testified the first job required her to reach overhead and bring down two cases full of boxes. She estimated there were 24 boxes in a case. The second job required pulling a cart 25-30 feet that had heavy projectiles. The third job required inspecting bullets that came down a conveyor lane. Lastly, Petitioner shrink wrapped boxes.

The job description admitted into evidence reflects the job does not require reaching above the shoulders. (Rx. 3). The job video does not demonstrate shoulder level or above work. (Rx. 2).

Mike Meadows testified on behalf of Respondent. He generally corroborated Petitioner's description of her work activities. He disputed her work table was 60 inches high and stated it is closer to 48 inches. He also acknowledged the cases Petitioner currently lifts are lower than in the past, but that Petitioner did not have to reach and lift overhead to get cases.

Dr. Ahn testified via evidence deposition on March 5, 2012. He opined that Petitioner's work activities contributed to the right shoulder condition if her job involved working at a 60 inch table and lifting things overhead. (Px. 4 at 8). He stated that as long as the work was around shoulder level or above, it could contribute to her shoulder condition. (Px. 4 at 9-10). On cross-examination, Dr. Ahn admitted the Petitioner's right shoulder condition could develop irrespective of any trauma or repetitive trauma. (Px. 4 at 20-21). He confirmed that he had not reviewed any job description and did not know how long Petitioner worked for Respondent. (Px. 4 at 22). He admitted Petitioner would not have required surgery unless she had symptoms and the symptoms did not start until after work. (Px. 4 at 25-26).

Dr. Paletta testified via evidence deposition on September 14, 2012. He opined that as of the April 25, 2011 exam her condition was not work related. (Rx. 1 at 9). Regarding the first surgery, Dr. Paletta did not see any evidence, based upon review of the MRI and operative photos, to indicate a full thickness tear. He disputed the need for surgical repair because there was no evidence of a partial thickness rotator cuff tear on the operative photos. (Rx. 1 at 10-11). After reviewing the job description and video, he opined a medical causal relationship did not exist between the right shoulder condition and work activities because there was no repetitive overhead work or reaching across the body. (Rx. 1 at 11-12).

**Based upon the foregoing, the Arbitrator makes the following conclusions:**

1. Petitioner did not meet her burden of proof regarding the issue of accident. The Arbitrator notes that the Petitioner's complaints of pain were at home and that she denied any complaints while at work. The job description shows that her work is varied throughout the day and while she claims she had to do overhead lifting activities, this is refuted by both the job descriptions entered into evidence and by the testimony of Michael Meadows. Based on these factors, the Arbitrator finds that the Petitioner failed to show a repetitive trauma accident occurring on the March 29, 2011.
2. Petitioner also failed to meet her burden of proof regarding the issue of causation. While Dr. Ahn provides an opinion on causation favoring the Petitioner, his opinion was based on the Petitioner's job description that included overhead lifting. The evidence adduced at trial refutes the Petitioner's version of her job duties in regards to whether she had to do any overhead work. As such, the Arbitrator finds the opinions of Dr. Paletta more reliable on this issue.
3. Based on the Arbitrator's findings regarding accident and causation, all other issues are rendered moot.

07 WC 25321

09 WC 00988

Page 1

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF MADISON )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse <input type="text" value="Choose reason"/>	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RICHARD BUTLER,

Petitioner,

vs.

NO: 07 WC 25321  
09 WC 00988

STATE OF ILLINOIS / CHOATE  
MENTAL HEALTH CENTER,  
Respondent.

**14IWCC0286**

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability (TTD), medical expenses and prospective medical treatment, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that the Petitioner's award of TTD should be reduced to 198-1/7 weeks, covering the periods from March 17, 2007 through August 1, 2008, and from October 25, 2010 through March 27, 2013.

Pursuant to a July 3, 2008 report of surgeon Dr. Davis (following April 30, 2008 knee surgery), Petitioner was released to full duty as of July 24<sup>th</sup> with regard to the left knee condition (Petitioner's Exhibit 7). The Respondent sent July 25, 2008 correspondence to Petitioner



**14IWC0286**

indicating that, pursuant to this release, he was to report back to work as of August 1, 2008. (Respondent's Exhibit 11). The Petitioner testified that he did not do so both because he was having ongoing knee problems, and because he had been held off work by Dr. Guyton.

With regard to the knee condition, while Petitioner testified to ongoing knee problems, the evidence in the record does not reflect any further medical visits after August 1, 2008 until April 18, 2011 with Dr. Davis. (Petitioner's Exhibit 7). Thus, there is no medical basis for off work status between August 1, 2008 and October 25, 2010 with regard to Petitioner's knee condition.

With regard to his back and/or neck conditions between August 1, 2008 and October 25, 2010, the record reflects that the Petitioner treated with Dr. Guyton (starting on April 9, 2008), Dr. Juergens (starting on December 15, 2008), Dr. Gornet (first time on October 25, 2010). The Petitioner did not visit primary care provider Dr. Ribbing after February 26, 2008 until February 14, 2011, and there is no evidence in the record indicating Petitioner was taken off work by Dr. Ribbing during this gap period, or on February 14, 2011, which appears to have been a visit for the sole purpose of pre-surgical testing, not treatment.

While the Petitioner testified that he was held off work by Dr. Guyton between August 1, 2008 and October 25, 2010, the records of Dr. Guyton (Petitioner's Exhibit 4) do not reflect any off work or work restriction instructions or notes for this period. In fact, her August 28, 2008 report notes the Petitioner had been asked to return to work following his release from knee treatment, but that he was "leaving job without pay – they will hold it. Atty is going to arbitration in September". On December 9, 2008 Dr. Guyton noted the Petitioner "states if he could work he would have already gone back. Afraid of altercations at work and re-injury". Despite these specific discussions of the Petitioner's work status, as well as off work notes from Dr. Guyton prior to August 1, 2008, at no time did Dr. Guyton indicate in her subsequent records that the Petitioner was restricted from work.

Dr. Juergens was a pain management physician who provided injections to the Petitioner. His records (Petitioner's Exhibit 5) reflect nothing with regard to the Petitioner's work status, other than his note on March 23, 2009 that Dr. Goldring had recommended the epidural injections, and other than that Petitioner was able to return to work.

Petitioner first visited Dr. Gornet on October 25, 2010. At that time the doctor initially took the Petitioner off work. Surgery was performed at L5/S1 by Dr. Gornet on April 6, 2011.

It should be noted that a functional capacity evaluation of the Petitioner on September 19, 2007 noted some inconsistencies with the reliability/accuracy of the Petitioner's subjective reports of pain/limitations. (Respondent's Exhibit 12). This includes a note that he failed four out of seven reliability indicators. This is further support for the Petitioner's ability to work following his release from knee treatment.

**14IWCC0286**

The Commission finds that the preponderance of the evidence supports that October 25, 2010 is the date upon which Petitioner again became temporarily and totally disabled (following the initial March 17, 2007 through August 1, 2008 TTD period). He has remained off work pursuant to the order of Dr. Gornet since that time. Until October 25, 2010, the Commission finds that there was no reasonable evidentiary basis for ongoing TTD after August 1, 2008.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$442.90 per week for a period of 198-1/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit in the amount of \$33,151.06 based on previous payment of TTD, as well as \$22,838.90 under §8(j) of the Act (Respondent's Exhibit 13); provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner any reasonable, related, necessary and outstanding medical bills contained in Petitioner's Exhibit 12 as medical expenses under §8(a) of the Act, but also pursuant to Section 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit for any medical expenses contained in Petitioner's Exhibit 12 that were previously paid through either the workers' compensation carrier, or by the group health insurance carrier under §8(j) of the Act; provided that Respondent shall hold Petitioner harmless from any claims and demands by any providers of the benefits for which Respondent is receiving credit under this order.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall authorize and pay for the related, prospective medical treatment recommended by Dr. Matthew Gornet, including a two level cervical disc replacement.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.


14IWCC0286

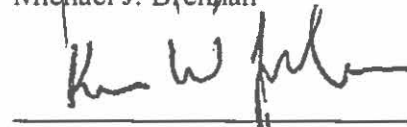
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: APR 17 2014  
TJT:pc  
o 3/25/14  
51

  
Thomas J. Tyrrell

  
Michael J. Brennan

  
Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

**BUTLER, RICHARD**

Employee/Petitioner

Case# **07WC025321**

09WC000988

**SOI (CHOATE MENTAL HEALTH)**

Employer/Respondent

**14IWCC0286**

On 5/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

LAW OFFICES OF FOLEY & DENNY  
TIM DENNY  
103 TRANSCRAFT DR  
ANNA, IL 62906

1745 DEPT OF HUMAN SERVICES  
BUREAU OF RISK MANAGEMENT  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

0988 ASSISTANT ATTORNEY GENERAL  
KYLEE J JORDAN  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PARKWAY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy  
Pursuant to 820 ILCS 305/14

MAY 2 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

STATE OF ILLINOIS )

COUNTY OF MADISON

)SS.

**14IWCC0286**

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/>            | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/>            | Rate Adjustment Fund (§8(g))          |
| <input type="checkbox"/>            | Second Injury Fund (§8(c)18)          |
| <input checked="" type="checkbox"/> | None of the above                     |

**ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION  
19(b)**

**Richard Butler**

Employee/Petitioner

Case # 07 WC 25321

v.

Consolidated cases: 09 WC 00988

**State of Illinois(Choate Mental Health)**

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **March 27, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

**DISPUTED ISSUES**

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?  
☐ TPD      ☐ Maintenance      ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **Intervening Accident**

## FINDINGS

On the date of accident, **11/08/2006 & 03/16/2007**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$34,546.46**; the average weekly wage was **\$664.36**.

On the date of accident, Petitioner was **39** years of age, *married* with **2** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$33,151.06** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$33,151.06**.

Respondent is entitled to a credit of **\$22,838.90** under Section 8(j) of the Act.

## ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$442.90/week for 308-6/7 weeks, commencing 3/17/07 through 3/27/13, as provided in Section 8(b) of the Act. Respondent shall receive credit of \$33,151.06 for temporary total disability paid to date. Respondent shall receive credit of \$22,838.90 for amounts paid pursuant to section 8(j) of the Act.

Respondent shall pay any reasonable, related, necessary and outstanding medical bills contained in Petitioner's exhibit 12 to the Petitioner pursuant to the sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any amounts paid through the workers compensation carrier or by the group health insurance carrier and hold Petitioner harmless for such payments.

Respondent shall authorize and pay for the related, prospective, medical treatment recommended by Dr. Gornet including of a two level cervical disc replacement.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

**5/1/13**  
Date

MAY - 2 2013



14IWC0286

## Findings of Fact

On November 8, 2006, Petitioner was working for the Respondent as a mental health tech II at the Choate Mental Health Facility. He was working in the full performance of his duties when he assisted co-workers in an effort to control a violent patient. In the altercation the patient punched the Petitioner in the side of the neck. The Petitioner's description of this incident is also set forth in the accident reports and witness statements from the facility. (*see Res. Exh. 1-3*). For this incident, the Petitioner filed an Application for Adjustment of Claim under case number 09 WC 988. (Arb. Exh. 3) Petitioner did not receive medical treatment following this incident, until a subsequent injury on March, 17, 2007.

On March 17, 2007 an extremely violent patient body slammed a female technician. As the patient attempted to hit a female technician, the Petitioner stepped in the way to shield her. The patient kicked the Petitioner in the left knee. In the altercation, the patient also pulled the Petitioner forward in an effort to pull him to the ground. The Petitioner experience immediate pain in his knee and back. The Petitioner's account of the accident that occurred on March 17, 2007 is set forth in the accident reports and witness statements filed at the facility. (*See Res. Exh. 4, 5, & 6*). For this incident, the Petitioner filed an Application for Adjustment of Claim under case number 07 WC 25321. (Arb. Exh. 2)

The Petitioner sought medical treatment with his family physician Dr. Ribbing. Dr. Ribbing referred him to Dr. Ritter for treatment and evaluation of his knee condition. On June 7, 2007 Dr. Ritter performed a left knee arthroscopy, arthroscopic abrasion chondroplasty of the Patella, and lateral release. The treatment rendered by Dr. Ritter was not disputed by the Respondent. On January 4, 2008 Dr. Ritter noted the petitioner had persistent pain, patellofemoral joint after the previous lateral release. After obtaining an FCE that noted back pain, patella pain, and neck pain Dr. Ritter released the Petitioner from his care. Dr. Ritter noted that the Petitioner remained off work for his back injury for which he was not providing treatment. (Pet. Exh. 8, p. 2). The Petitioner requested a second opinion and Dr. Ritter directed him to the work comp carrier.

Dr. Thomas Davis of Southern Illinois Orthopedic provided he Petitioner a second opinion through a referral from the facility workers compensation coordinator. Dr. Davis recommended and performed additional surgeries on the Petitioner's left knee on April 20, 2008 and June 8, 2011. The injury to the Petitioner's left knee and the care and treatment to the knee was not disputed by the Respondent. Medical bills for the care and treatment related to the petitioner's left knee have been paid were not at issue in this 19(b) hearing for prospective medical treatment.

The Petitioner was referred to Dr. Anthony Knox for evaluation of his neck and back injuries. On May 23, 2007 Dr. Knox noted the Petitioner sustained a left knee injury at work and continued to have low back and neck pain. (Pet. Exh. 6, p. 10). Dr. Knox recommended diagnostic studies and work hardening. Petitioner testified Dr. Knox abruptly left his practice at which point he consulted with the workers compensation coordinator at the facility and obtained approval to transfer care to Dr. Guyton in Herrin IL.

Dr. Guyton took over the Petitioner's care for his low back and cervical issues in early 2008. Dr. Guyton noted the Petitioner had complaints of low back pain, neck pain with numbness in his fingers. Petitioner was scheduled for knee surgery and Dr. Guyton recommended EMG/NCV for further evaluation. (Pet. Exh. 4, p 20). Dr. Guyton referred Petitioner to Dr. Paul Juergens for lumbar epidural steroid injections.



Petitioner underwent multiple injections with Dr. Juergens with approval from the Respondent. He received little relief from three epidural injections and was referred back to Dr. Guyton. (Pet. Exh. 5, p 22). On August 26, 2010 Dr. Guyton referred the Petitioner to Dr. Gornet for surgical evaluation. (Pet. Exh 5, p 7).

Dr. Gornet examined the Petitioner on October 25, 2010. Dr. Gornet recommended repeat MRI studies and a review of the injection records. On December 16, 2010 Dr. Gornet noted significant disc pathology at L5-S1 and recommended a discogram. He also noted that the Petitioner expressed that he emphatically desired to return to work. On February 10, 2011 Dr. Gornet noted the discogram was non-provocative at L4-5. The procedure at L5-S1 was aborted. The CT scan revealed the disc was collapsed at L5-S1 and would not allow the needle to penetrate. Dr. Gornet recommended an L5-S1 fusion. On April 6, 2011 Dr. Gornet performed the lumbar fusion at L5-S1.

After multiple follow up appointment Dr. Gornet noted on September 22, 2011 that the Petitioner continued to do well from his lumbar surgery. He noted the original scan showed structural problems at C5-C6 and C6-7, but the neck was put on hold to deal with his back. Dr. Gornet recommended an MRI of the neck. On November 21, 2011 Dr. Gornet noted the Petitioner was advancing to physical therapy on for his low back and the CT scan revealed good early signs of bone consolidation. Dr. Gornet recommended conservative care in the form of injections and physical therapy for the cervical spine. On January 26, 2012, Dr. Gornet recommended a cervical myelogram due to his failure of conservative measures. On March 12, 2012, Dr. Gornet reviewed the results of the cervical myelogram noting a significant amount of stenosis on the right at C5-6 and C6-7 with disc pathology. Dr. Gornet recommended a two level disc replacement at C5-6 and C6-7. On May 10, 2012, he continued to recommend the two level disc replacement noting the procedure had been denied by the insurance carrier. The Petitioner continued to follow up with Dr. Gornet through November 5, 2012. Dr. Gornet continued his recommendation for a two level disc replacement. He also noted the Petitioner continued to be temporarily totally disabled.

Dr. Gornet testified via evidence deposition on July 25, 2011. (Pet. Exh. 3) He is a board certified orthopedic surgeon who devotes his practice to spine surgery. (Pet. Exh. 3, p. 4). He opined the Petitioner's structural problems in both his cervical and lumbar spine were related to his work accidents and particularly the March 2007 accident since he had not been able to work since that time. (Pet. Exh. 3, p 9). He noted the work up of the neck issues were placed on hold to focus on treatment of the back. After further evaluation the L5-S1 fusion surgery was performed on April 6, 2011. Dr. Gornet testified that the altercation with the patient at least aggravated the petitioner's spine condition. Specifically, Dr. Gornet believes that the altercation disrupted the annulus which caused the persistent discogenic pain. (Pet. Exh. 3, p. 12). He opined the conditions for which he was treating the Petitioner were at a minimum an aggravation of a pre-existing minimally symptomatic condition, but also caused a new injury which necessitated further treatment including surgical intervention. (Pet. Exh. 3, p. 15).

Dr. Gornet testified a second time via evidence deposition on January 24, 2013. (Pet. Exh. 2) Dr. Gornet confirmed that none of his prior opinions regarding the Petitioner's case have changed. (Pet. Exh. 2, p. 5). He noted that he examined the petitioner on November 21, 2011 and the CT scan showed good consolidation of the lumbar spine. He also reviewed the MRI of the cervical spine due to persistent neck pain, headaches, pain into the right shoulder and right arm, and hand numbness. (Pet. Exh. 2, p. 5). Based on a CT Myelogram and following the failure of physical therapy and injections, Dr. Gornet

recommended disc replacement surgery at C5-6 and C6-7. He continued to offer the opinion that the Petitioner's condition is related to his work injuries. (Pet. Exh. 2, p. 13). He also confirmed on cross examination that even though it had been several years since the work accidents, if the conditions remained untreated the Petitioner would continue to have symptoms. (Pet. Exh. 2, p. 21). On cross examination about the lack of spine treatment after the accident, Dr. Gornet noted his opinions were consistent with the spine treatment provided by Dr. Knox in the months after the accident. (Pet. Exh. 2 p. 26). He also confirmed the pathology on the May 23, 2007 cervical MRI correlates with his current diagnosis. (Pet. Exh. 2, p. 27).

Dr. James Goldring examined the Petitioner on behalf of the Respondent and also testified via evidence deposition on August 17, 2011. Dr. Goldring is a neurologist and does not perform surgery. (Res. Exh. 10, p. 19) He first evaluated the Petitioner on February 8, 2008. He provided a neurologic diagnosis of lumbar strain and secondarily cervical strain. He opined that "his symptoms are related to the March 16, 2007 incident." (Res. Exh. 8, p. 1). Dr. Goldring offered some additional diagnostic studies. He opined that given the Petitioner did fairly well on the FCE, he could return to work. Dr. Goldring re-evaluated the petitioner on September 26, 2008. He reiterated his opinions that the Petitioner's conditions were related to the March 16, 2007 accident, and recommended lumbar epidural steroid injections. Dr. Goldring confirmed during his cross-examination, that the employer did not request the Petitioner be evaluated for the November 8, 2006 accident. (Res. Exh. 10, p 24). He also confirmed his understanding of the FCE was based on what was reported to him, not on his personal review of the FCE. (Res. Exh. 10, p. 28). He agreed that the April 3, 2007 did show some form of disc collapse at L5-S1 as noted by the radiologist. (Res. Exh. 10, p. 35). He also confirmed the Petitioner's symptoms of tingling in the foot could be suggestive of radicular symptoms. (Res. Exh. 10, p 37). Dr. Goldring did not evaluate the Petitioner's knee condition. (Res. Exh. 10, p. 39).

Petitioner has not returned to work since March, 2007 and has been paid non-occupational disability benefits through the date of the arbitration hearing.

## Conclusions of Law

1. Petitioner sustained his burden of proof regarding the issue of whether his current condition of ill-being is causally connected to his undisputed accidents. The undisputed facts show that he was involved in altercations with violent patients on November 8, 2006 and March 16, 2007. Petitioner sought medical treatment in timely fashion following the March 16, 2007 accident. Medical reports within weeks the accident confirm the petitioner was actively pursuing treatment for injuries to his knee, neck, and low back. The Petitioner underwent multiple knee surgeries for injuries he sustained as a result of his work related injuries. Respondent provided no evidence to question causation or reasonable and necessity of the injuries for petitioner's knee injuries. Regarding Petitioner's neck and back injuries, the bulk of the evidence also support a finding of causation. The chain of referrals indicates Petitioner was ultimately referred to Dr. Gornet through the Respondent. Dr. Gornet is board certified spine surgeon, who recommended and exhausted conservative measures before recommending and performing surgery on Petitioner. Respondent relies on the Section 12 opinions of Dr. Goldring who is a neurologist. Dr. Goldring does not perform surgery of any kind. Dr. Goldring provided no opinions regarding the care and treatment performed by or recommended by Dr. Gornet. Based on the facts and evidence presented,

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the Arbitrator finds that Dr. Gornet was in a better position to assess the issues of medical causation, and accordingly relies on his opinions in this regard. Additionally, the Arbitrator notes that the evidence presented at the hearing does not show Petitioner sustained an intervening accident that would have broken the chain of causation.

2. Petitioner sustained his burden of proof regarding the issue of medical expenses. There was no evidence offered to question the reasonableness, necessity or the causal relationship of Petitioner's medical treatment for his knee injuries, his neck or his back. Accordingly, the Arbitrator finds the care and treatment rendered to the Petitioner for these conditions are causally related to the work accidents and reasonable and necessary. Respondent is ordered to pay any and all outstanding medical bills related to Petitioner's related medical treatment contained within Petitioner's Exhibit 12 to the Petitioner pursuant to the fee schedule. However, Respondent shall receive credit for any amounts paid through the workers compensation carrier or by the group health insurance carrier and hold Petitioner harmless for such payments.

3. The Arbitrator also concludes the proposed C5-6, C6-7 cervical disc replacement is reasonable and necessary and causally related to the work accident. Respondent is hereby ordered to authorize and pay for reasonable medical care recommended by Dr. Gornet related to the C5-6, C6-7 disc replacement pursuant to sections 8(a) and 8.2 of the Act.

4. Respondent shall pay Petitioner temporary total disability benefits from March 16, 2007 to the date of hearing. Respondent shall receive credit for any amounts paid toward disability. Respondent shall receive credit pursuant to section 8(j) for amounts paid as outlined in Respondent's Exhibit 13.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF KANE )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeff Fessler,  
 Petitioner,

vs.

NO: 10 WC 35521

**14IWCC0287**

Nations Roof North,  
 Respondent.

DECISION AND OPINION ON REMAND

On December 22, 2011 Arbitrator Kinnaman issued a decision in which she found Petitioner sustained an accidental injury arising out of and in the course of his employment on October 30, 2009. As a result of said accident, she found Petitioner was temporarily totally disabled from November 18, 2009 through September 19, 2010, December 5, 2010 through January 10, 2011 and August 16, 2011 through October 20, 2011 for 58-3/7 weeks under Section 8(b) of the Act and is entitled to \$36,651.61 in medical expenses per the medical fee schedule. She also found Petitioner failed to prove that he is entitled to vocational rehabilitation or maintenance. Respondent appealed the decision of Arbitrator Kinnaman. The Issues on Review were whether a causal relationship exists between the October 30, 2009 accident and Petitioner's present condition of ill-being, and if so, whether Petitioner is entitled to reasonable and necessary medical expenses, temporary total disability and permanent disability benefits. The Commission viewed the case differently from the Arbitrator and found, based on the surveillance video, that Petitioner was only temporarily totally disabled from November 18, 2009 through September 10, 2010. The Commission vacated the two subsequent temporary total disability periods awarded by the Arbitrator. Both Petitioner and Respondent appealed the Commission's decision. On April 29, 2013, the Circuit Court of Kane County issued an Order remanding the case to the Commission and seeking clarification of the Commission's decision. Pursuant to the Circuit Court's Order the Commission has clarified its decision as noted below.

FINDINGS OF FACT AND CONCLUSION OF LAW

The Commission finds:

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1. Petitioner testified that he works as a union sheet metal worker. On an average day he would climb ladders, kneel, squat, carry heavy materials repeatedly throughout the day. On October 30, 2009 while Petitioner was carrying a wall panel down a hill he slipped and twisted his left knee.

2. The November 18, 2009 left knee MRI shows that the lateral facet of the patella and central aspect of the patella reveal moderate chondromalacia changes with fibrillation and fissures, measuring 3 mm in thickness. There is subchondral marrow edema at the extreme superior aspect of the patella. The patella tendons appear normal. There is subcutaneous edema overlying the infrapatellar tendons. Moderate joint effusion is present. The medial collateral ligament is intact, though it is thickened with surrounding edema. The medial meniscus reveals degeneration with a complex tear posteriorly involving the free edge. The lateral meniscus reveals degeneration with no evidence for a tear. There was a multiple microlobulated ganglion located in inferior aspect of Hoffa's fat pad with surrounding edema, which measured approximately 13 mm in size and appears to be at the ACL attachment. There is a 9 mm multi microlobulated ganglion emanating from the root of the medial meniscus. There is a small gastrocnemius semi-membranosal bursal cyst visualized.

3. On January 7, 2010 Petitioner underwent surgery consisting of an arthroscopic partial medial meniscectomy and chondroplasty of the patella and medial femur. The post operative diagnosis was a medial meniscal tear of the left knee, Grade III chondromalacia patellar undersurface and medial femoral condyle with some flap instability.

4. On June 25, 2010 Petitioner followed up with Dr. Grosskopf who indicated that Petitioner was 5-1/2 months post surgery. Dr. Grosskopf reported: "We have kind of hit a wall with Petitioner." He has refractory subpatellar and infrapatellar pain. He gets pain with his knee continuously bent, with squatting, kneeling and climbing stairs. He has a little bit of pain with level ground walking. Dr. Grosskopf opined that he believes Petitioner has developed some patellar tendinitis that has not healed. He ordered an MRI.

5. The July 7, 2010 left knee MRI shows there is fibrillation over an 18 mm region of the central superior aspect of the patella with near complete cartilaginous loss over 4 mm superiorly. There is underlying bone marrow edema in this region approximately 11 mm, which has increased in size compared previous. There is a small deep infrapatellar bursitis.

6. On August 13, 2010 Dr. Grosskopf noted that he believes Petitioner is having patellofemoral issues. We have complied with the independent evaluator's recommendations of steroid injection, extended therapy, home program, patellar strapping and we have even resorted to viscosupplementation. Petitioner has had a level of discomfort



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now where squatting, kneeling, crawling are prohibited so he is a light duty candidate but his capabilities are not consistent with his normal work. He will give Petitioner one more month to see how the viscosupplementation will do. If he cannot return to work, he will need a functional capacity evaluation. Dr. Grosskopf remarked that Petitioner is certainly not disabled. He is doing things as evidence by the fact that his hands are grimy with little cuts. As such he is using his hands. There are things he can do. It is just the knee limits his normal occupation. He tells me he really can't kneel at all and if he does, it hurts. He is only able to kneel at most a minimum of a couple of minutes. The same is true with squatting or even ladder climbing.

7. Approximately twenty hours of surveillance of Petitioner took place between September 7 through September 8, 2010 and September 10 through September 14, 2010. The video shows Petitioner was physically active from the 7/8 a.m. until 4/5 p.m. Specifically, on September 7<sup>th</sup> Petitioner was seen on a ladder. He was also seen cleaning windows of vehicle and carrying items out of a truck and into a garage. On September 8<sup>th</sup> he was working on a garage door and was squatting, and kneeling. He was also kneeling on a truck seat with his left knee bent and standing only on his right leg. He also was mowing the lawn. On September 10<sup>th</sup> he was again squatting and kneeling on his left knee only.

8. Petitioner testified that in September of 2010 he was doing light activities, running errands, doing a few occasional things. He was performing yard work and doing some painting at his sister's house and performing some additional work on a job he had provided a warranty to previously. The videos show him doing some refinishing of his sister's garage doors, moving things that weren't too heavy, occasionally kneeling and squatting. Petitioner said he didn't receive any pay for the work he did on his sister's house or the warranty work that he did. While he was performing these tasks his left knee was painful. He had to take breaks and would take a Vicodin when he felt it was necessary so he could push through the pain and finish what he started. In the days after he performed these activities, his left knee was sore. He had to ice down his knee on daily basis and since the surgery he can't sleep.

9. On September 13, 2010 Dr. Grosskopf recommended Petitioner undergo a FCE and he referred Petitioner to Dr. Cole. On October 18, 2010, Dr. Grosskopf opined Petitioner has a meniscal lesion and some patellar chondromalacia. His injury, surgery and less than ideal recovery has left Petitioner with some restrictions that are not compatible with his normal physical work. He noted that Petitioner needs a second opinion from a cartilage expert. If nothing further can be done then Petitioner should undergo a FCE. He opined that at this point Petitioner he cannot work.

10. On October 20, 2010 Dr. Kornblatt evaluated Petitioner. Dr. Kornblatt noted that during the physical evaluation Petitioner was walking with a normal gait. He was able to do full squats. When doing a full squat he complained of a burning type pain over the

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anterior aspect of the left knee. The left knee revealed no local swelling or tenderness. His range of motion was from full extension to 140 degrees of flexion. His patella tracking was excellent. He didn't elicit any apprehension or crepitus.

11. On November 17, 2010 Dr. Grosskopf noted that in reviewing the IME report he learned that there was surveillance that apparently showed Petitioner was doing things there that I thought Petitioner could not do. Consequently, any further work-compensation involvement has been terminated. He opined that they had rehabbed Petitioner as best as they could. He recommended that Petitioner undergo a FCE and four weeks of work conditioning. He opined that he did not think that Petitioner could do his former job. Petitioner participated in physical therapy and work hardening from December 2, 2010 through December 31, 2010.

12. On December 6, 2010 Petitioner underwent a FCE. The therapist noted that it was a valid FCE and Petitioner demonstrated the ability to work in light to medium physical demand levels. He further noted that Petitioner's job as a sheet metal worker is classified as a medium physical demand level.

13. On January 5, 2011 Petitioner underwent a second FCE. The therapist noted that it was a valid FCE and Petitioner demonstrated the ability to work at very heavy physical demand level. His job as a sheet metal worker is classified as a medium physical demand level. With the doctor's approval Petitioner may seek work within the safe working guidelines.

14. On January 10, 2011 Dr. Grosskopf noted that Petitioner's FCE shows his efforts were valid. He can perform at a heavy duty level with all methods of bending, lifting and material handling. He relates during his FCE he was in significant pain. The more bending and heavy lifting he did, the more he was hurt. Unfortunately, there is no way to measure pain. He noted that he would see Petitioner after he obtained his second opinion.

15. On March 22, 2011, Petitioner was evaluated by Dr. Freedberg. The doctor noted that on physical examination, Petitioner's McMurray's test was positive. He was tender to palpation tricompartmentally but most significantly tender at the medial facet with a positive patellofemoral compression test. With squatting there is crepitation as well as pain at the patellofemoral articulation.

16. On March 29, 2011 Petitioner saw Dr. Ketterling who noted that Petitioner has struggled post-operatively and never regained his prior level of function. Petitioner describes his anterior knee pain and said it was worse with flexed knee activities. Dr. Ketterling opined that Petitioner's symptoms relate to the patellofemoral. He suspected that



Petitioner has had progression of the chondral injury and he may be a surgical candidate for some type of procedure.

17. The April 14, 2011 left knee MRI showed that there is marked fibrillation and fissuring of the central aspect of the patella, particularly superiorly. There is near complete cartilaginous loss over the extreme superior aspect superiorly. There is subchondral marrow edema and microcyst formation in this previously noted MRI.

18. On April 19, 2011, Dr. Ketterling said he discussed the MRI with the Petitioner. The Petitioner is frustrated with this knee at this point. He is struggling significantly with trying to achieve the strengthening necessary to protect his patellofemoral joint and my suggestion is that we continue to find ways for him to aggressively strengthen both through the use of appropriate physical therapy as well as considering repeating his steroid injection. He is not enthusiastic about this recommendation which he reports trying previously with unsuccessful results.

19. On May 26, 2011 Petitioner saw Dr. Shadid who noted that Petitioner's status is post-operative partial medial meniscectomy and significant chondromalacia to the proximal pole of the patella, more so on the medial side. He is complaining of chronic disabling pain in his left knee. Petitioner reports he has had various recommendations including a tibial tubercle transfer and a cartilage restoration procedure. He complains of a catching sensation near the inferior pole of the patella which is most aggravated by prolonged sitting or climbing. He has consistently localized the pain to the region of the inferior pole of the patella. His MRI showed some chondromalacia grade II changes at the superior end of the patella. He did explain to Petitioner that a tibial tubercle transfer at this point is likely to make the symptoms worse. If we can determine his symptoms are coming from the patella tendon then we could consider a novel approach such as platelet rich plasma or high pulsating ultrasound treatment with the understanding that there are no guarantees with this.

20. On June 9, 2011 Dr. Shadid explained to Petitioner that the cartilage defect in the medial condyle and patella is one cause of his symptoms and the patellar tendon is the other cause of his symptoms. He showed Petitioner that the cartilage defects that he has are consistent with arthritic changes. It will be extremely difficult to repair that, if at all, at this point in his life. Ultimately whether cartilage restoration would be an option, would be dependent upon an arthroscopic assessment of the knee.

21. On August 16, 2011, Petitioner underwent surgery consisting of an arthroscopy and endoscopic debridement of the lateral facet of the patellar chondral defect along with a

platelet rich plasma injection to the left patellar tendon. The post operative diagnosis was chondral defect of and chronic patellar tendinosis of the left knee.

22. On October 20, 2011 Dr. Shadid noted Petitioner reports that the symptoms have continued to improve to the point where he is basically functioning doing all activities of daily living now. On physical evaluation there is no effusion in the knee and his range of motion is full. He exhibits a normal ligamentous exam. There is minimum tenderness at the inferior pole of the patella. He is able to navigate going up/down stairs quite easily. Dr. Shadid released him to return to work. He noted that the only restriction will be to avoid any prolonged or repetitive kneeling. Dr. Shadid opined that Petitioner has reached MMI believe that Petitioner's symptoms were aggravated by the direct blunt trauma to the patellar tendon after his original fall.

23. Petitioner testified that currently when he mows the grass or rakes leaves his left knee is aggravated. He experiences aggravation and/or pain when he performs normal activities such as carrying a bag of salt from his truck to his house, raking leaves, repetitive tasks, standing or sitting for prolong periods or driving for more than an hour. He does not believe he can perform the work of a sheet metal worker and he had not done anything regarding possibly returning to work in this area. He testified that he is not currently working. He said his hands are a little dirty because he was doing things around his house.

24. Dr. Freedberg was deposed on June 28, 2011. He testified he is a board certified orthopedic surgeon who evaluated Petitioner on March 22, 2011. He opined that Petitioner's left knee injury is causally connected to the October 30, 2009 work accident. Unfortunately, he has not done as well as would have been expected. The lingering symptoms would have to be related to the accident based on the chronology, the lack of prior history of any issues with this knee and the subsequent events. If one were to perform a surgery in the future Petitioner should undergo either a tibial tubercle elevation or a total knee arthroplasty. He opined that the recommended future surgery is causally connected to the October 13, 2009(sic) work accident. He reviewed some videos of Petitioner. He noted that during the video Petitioner was mostly painting. He did see Petitioner go up a ladder. He didn't see him do any repetitive squatting, kneeling or lifting of any heavy objects or performing any vigorous activities. What he saw on the video didn't have any effect on his diagnostic opinion. His opinion regarding physical restrictions or his opinion on whether Petitioner needed future medical care. There was nothing that Petitioner did in the video that was medically contraindicated. Petitioner did minor stuff when he was painting but he did not do anything that was aggressive and vigorous. He felt like Petitioner was working slowly. He disagrees with Dr. Kornblatt's view of the video. Unlike Dr. Kornblatt, he found some positive

findings in the knee. Based on that he felt that squatting, kneeling, bending and ladder climbing on any repetitive level would not be in Petitioner's best interest. He can perform these tasks but not repetitively. He opined that Petitioner is incapable of returning to work as a sheet metal worker. The July 7, 2010 MRI showed swelling which means the surgery was not effective in alleviating his symptoms. In my opinion there was an aggravation of the pre-existing patellar condition on October 12, 2009 (sic) The salient issue is the continued effusion/swelling in the joint. One does not usually get swelling in a joint unless there's something that's of issue. Clinically here it's the continued symptomatology he's expressing, which I diagnosed as continuing patellar pain which is the most common sequel that we see in post arthroscopic meniscectomy patients.

25. Dr. Kornblatt was deposed on August 24, 2011. He testified that he is a board certified orthopedic surgeon. He evaluated Petitioner on October 20, 2010. On physical examination, Petitioner was walking with a normal gait. He was able to do full squats. When doing a full squat he complained of a burning type pain over the anterior aspect of the left knee. The left knee revealed no local swelling or tenderness. The range of motion was from full extension to 140 degrees of flexion. His patella tracking was excellent. He did not elicit any apprehension or crepitus. Petitioner complained of a burning type of pain over the anterior aspect of his knee on full flexion. Burning type of pain is a subjective measure only and there is no way to measure this. There is less inflammation on the bone in the April 14, 2011 MRI versus the two prior MRIs. He reviewed the surveillance tapes. It showed Petitioner was working, painting, squatting, kneeling and carrying heavy objects without any apparent problem. His diagnosis at that time was medial meniscectomy and debridement of the patella. He believes that there was a causal connection between the work accident and Petitioner's initial surgery. However, at the time he saw Petitioner he did not find any objective evidence to substantiate Petitioner's ongoing subjective complaints. Additionally, there seemed to be a marked discrepancy between what the Petitioner told me he was capable of doing and what I visualized on the surveillance tape. It was my opinion that Petitioner had made a full recovery. He didn't need any additional medical care. He had reached MMI and he was capable of returning to his former job. He thought Petitioner was at MMI when he evaluated him on October 20, 2010 and before that period as well Petitioner seemed to be working just fine on the surveillance video. He didn't see any evidence that Petitioner was having any problems while he carried out these activities. Based on Petitioner's physical evaluation, a review of the videos surveillance and his FCE, Petitioner could return to his regular job. He doesn't agree with Dr. Freedberg. He didn't believe Petitioner. He thought Petitioner was lying and was malingering.

The Commission viewed this case differently than the Arbitrator. The Commission finds Petitioner was not credible. As such the Commission vacates the two subsequent temporary total disability periods awarded by the Arbitrator. More specifically, like the Arbitrator, the Commission finds after reviewing the surveillance video showing Petitioner performing maintenance activities for an extended period and involving, at times, his left knee, without any evidence of pain or disability, that Petitioner was capable of performing more tasks in general and more tasks regard to his left knee than he represented to Dr. Grosskopf at that time. In short Petitioner's actions captured on the surveillance tape belie his report to Dr. Grosskopf of the extent of his physically capacity. Dr. Grosskopf noted that while Petitioner could not return to his normal work, he was a light duty candidate and was not disabled. In fact, he noted, on August 13, 2010, based on the condition of his hands, that Petitioner had been performing some type of physical labor. He further noted that there were things Petitioner could do and his restrictions were solely limited to the use of his left knee. As such the Commission finds, based on Dr. Grosskopf's notes, that Petitioner was capable of working in a light duty position at that time. While Dr. Grosskopf initially recommended in September 13, 2010, on or around the time of the video surveillance, that Petitioner could not work and was in need of a referral to a cartilage expert or should undergo a FCE, he changed his mind shortly thereafter about whether Petitioner was a workers' compensation candidate. Specifically, on November 17, 2010, Dr. Grosskopf opined, after he learned that Petitioner was performing tasks that Petitioner represented that he could not do, that Petitioner be released from the workers' compensation program and that he undergo a FCE and work hardening. In the end, it appears that Dr. Gosskopf appears to have kept Petitioner off of work due to his subjective pain complaints, while there was overwhelming evidence via the surveillance tape and the condition of Petitioner's hands that Petitioner was capable of performing a light duty job.

Additionally, Dr. Kornblatt's evaluation which took place on October 20, 2010 further supports Dr. Grosskopf's opinion that Petitioner was capable of performing some type of work even though he was still complaining of knee problems. Specifically, Dr. Kornblatt found that on October 20, 2010 Petitioner's physical examination of his left knee was objectively normal. When Dr. Kornblatt was subsequently deposed he testified that at the time of this October 20, 2010 evaluation he didn't find any objective evidence regarding the left knee to substantiate Petitioner's ongoing subjective complaints. He noted that there was a marked discrepancy between what Petitioner said he was capable of doing and what he witnessed Petitioner doing on the surveillance tapes. At that time, he found Petitioner had reached a level of MMI, was not in need of any additional medical care and was capable of returning to his former job. He specifically stated that Petitioner had reached MMI at the time of his October 20, 2010 evaluation, if not before that time. He also found Petitioner to be lying and malingering at the time of his October 20, 2010 evaluation.

The Commission finds that Petitioner's ongoing medical treatment was prolonged by Petitioner's subjective pain complaints which were not supported by the activities Petitioner demonstrated in the surveillance tapes. Additionally, the Commission infers from his rough and

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dirty hands that Petitioner was indeed physical active to a greater degree than he was reporting to his treating doctors. In November of 2010, Dr. Grosskopf said he had rehabbed Petitioner as best as they could and he ordered a FCE to determine where Petitioner's physical capacity stood. Yet, he still ordered work conditioning and held Petitioner off of work based on Petitioner's subjective pain complaints. The two FCEs showed that Petitioner was ultimately capable of working at a very heavy physical demand level, which was well above the medium physical demand level of a sheet metal worker. None the less, Dr. Grosskopf did not release Petitioner to return to work and instead instructed him to obtain a second opinion. The second opinion came from Dr. Freedberg who opined that even though the FCE showed Petitioner could return to heavy physical demand level he could not perform these activities on a regular basis and he needed more treatment to alleviate his subjective pain complaints. Drs. Freedberg, Ketterling and Shadid all offered up alternative treatments ranging from conservative to invasive surgery. Ultimately the invasive surgery was undertaken.

Even post surgery, and after being released to return to work by Dr. Shaded, Petitioner still testified that normal activities and repetitive or prolonged tasks aggravated his left knee condition to such a degree that he was incapable of returning to work as a sheet metal worker and although he testified to performing physical tasks such as mowing, raking and carrying items he had not looked for work or done anything to return to work.

Based on the above, the Commission finds Petitioner is not credible, assigns more weight to Dr. Kornblatt's than Dr. Freedberg's opinions, finds Petitioner reached MMI on/around October 20, 2010 if not sooner, and finds Petitioner is not entitled to the two subsequent temporary total disability periods awarded by the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,110.44 per week for a period of 43-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act, and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanency disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$36,651.61 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.



14IWCC0287

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to  
Petitioner interest under §19(n) of the Act, if any.

DATED: APR 18 2014

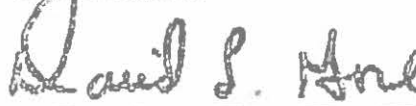
MB/jm

O: 3/6/14

43



Mario Basurto



David L. Gore



Michael P. Latz

STATE OF ILLINOIS

)

) SS.

COUNTY OF  
WILLIAMSON

)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
	<input type="checkbox"/> PTD/Fatal denied
<input checked="" type="checkbox"/> Modify <input type="text" value="down"/>	<input checked="" type="checkbox"/> None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AARON GOFF,

Petitioner,

**14IWCC0288**

vs.

NO: 11 WC 4854

STATE OF ILLINOIS/  
ILLINOIS YOUTH CENTER HARRISBURG,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical, notice, temporary total disability, and permanent partial disability and being advised of the facts and applicable law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Respondent filed a Motion for Leave to File Instantly on January 7, 2014. The Respondent filed its Statement of Exceptions on January 7, 2014; however, it was due by January 6, 2014. In its Motion, the Respondent argued that the State of Illinois was closed on January 6, 2014 due to inclement weather. The Commission grants the Motion noting that the Illinois Workers' Compensation Commission was closed on January 6, 2014 due to the weather.

The Commission modifies the Decision of the Arbitrator with respect to permanent partial disability only. The Commission finds that the Petitioner is entitled to fifteen percent loss of use of the right hand and twelve percent loss of use of the left hand as the result of the January 31, 2011 work-related injury.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on September 11, 2013, is hereby modified as stated above, and otherwise

affirmed and adopted.

14IWC0288

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$819.48 per week for a period of 4-4/7 weeks commencing June 21, 2011 through July 23, 2011, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$669.64 per week for a period of 55.35 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 15% loss of use of the right hand and 12% loss of use of the left hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$31,311.56 for medical expenses under §8(a) of the Act, and subject to the medical fee schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: APR 18 2014

MJB/tdm  
O: 3/25/14  
052

  
Michael J. Brennan

  
Thomas J. Tyrrel

  
Kevin W. Lamborn



ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

141WCC0288

Case# 11WC004854

GOFF, AARON

Employee/Petitioner

SOI/ILLINOIS YOUTH CENTER HARRISBURG

Employer/Respondent

On 9/11/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC  
#6 EXECUTIVE DR  
SUITE 3  
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS  
2101 S VETERANS PKWY\*  
PO BOX 19255  
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL  
AARON L WRIGHT  
601 S UNIVERSITY AVE SUITE 102  
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS  
ATTORNEY GENERAL  
100 W RANDOLPH ST  
13TH FLOOR  
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT  
WORKERS' COMPENSATION CLAIMS  
PO BOX 19208  
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy  
pursuant to 820 ILCS 305/14

SEP 11 2013



*[Signature]*  
KIMBERLY B. JANAS Secretary  
Illinois Workers' Compensation Commission

141WCC0288

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF MADISON )

☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION

Aaron Goff  
 Employee/Petitioner

Case # 11 WC 04854

v.

Consolidated cases: \_\_\_\_\_

State of Illinois/Illinois Youth Center Harrisburg  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on July 23, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On January 31, 2011, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is, causally related to the accident.

In the year preceding the injury, Petitioner earned \$63,919.00; the average weekly wage was \$1,229.22.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

Respondent has not paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

## ORDER

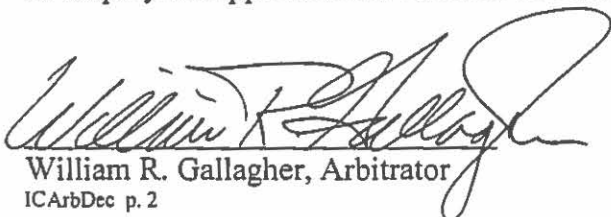
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$819.48 per week for four and four-sevenths (4 4/7) weeks commencing June 21, 2011, through July 23, 2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$669.64 per week for 66.625 weeks because the injury sustained caused the 17 1/2% loss of use of the right hand and the 15% loss of use of the left hand, as provided in Section 8(e) of the Act.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
William R. Gallagher, Arbitrator  
ICArbDec p. 2

September 6, 2013

Date

SEP 11 2013

## Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent. The Application alleged a date of accident (manifestation) of January 31, 2011, and that Petitioner sustained repetitive trauma to his right and left hands and right and left arms/elbows. Respondent disputed liability on the basis of accident, notice and causal relationship.

Petitioner testified that from 1990 to 1993 he worked as a laborer out of the Union Hall in Benton. While working as a laborer, Petitioner used a variety of hand tools including a tamper and jackhammer, both of which caused some vibration. From 1993 to 1998, Petitioner worked as a truck driver for Central States Coca-Cola. While working at this job, Petitioner had to use his hands/arms when driving and loading/unloading trucks. Petitioner did not experience any upper extremity symptoms during these two periods of employment.

In 1998 Petitioner began working for Respondent as a Correctional Officer at Vienna Correctional Center. While working at Vienna, Petitioner had to open/close heavy wooden doors, key them with keys that were sometimes difficult to operate as well as performing shakedowns of inmates, cuffing/uncuffing them, etc. Petitioner also assisted during inmate transfers which required cuffing/uncuffing of the hands and shackling/unshackling of the feet. For approximately three years, Petitioner was a member of the tactical unit which required him to do cell extractions and use batons, which also required the repetitive use of his hands/arms.

On July 1, 2006, Petitioner transferred to the Illinois Youth Center Harrisburg as a Juvenile Justice Specialist. Petitioner testified that the youth in the facility have to be behind secured doors all of the time. The doors had to be locked/unlocked when there was any type of inmate movement. This included doors to the cells, showers and laundry room. Petitioner stated that the keys to the doors were rather large and that, on numerous occasions, the locks were difficult to open. Petitioner had to many times use both hands, jiggle the locks, kick the door or some combination of all three. Petitioner testified that he had to perform this activity up to 250 times per day. Petitioner also had to perform shakedowns, use Folger-Adams keys to open chuckholes and hand-write reports. During the course of performing these job duties, Petitioner began to notice tingling in his fingers and aching in his hands, in particular, when turning the keys. During the course of the day, Petitioner's finger/hand symptoms would worsen. Following the end of his shift, approximately 20 to 30 minutes thereafter, his fingers/hands would return to normal; however, he stated that the symptoms would reoccur and sometimes cause him sleep disruption.

Respondent tendered into evidence a DVD which showed the job duties of a Juvenile Justice Specialist and Petitioner disputed its accuracy. Petitioner stated that the video did not show any difficulties with locking/unlocking the doors nor did it show any forceful pulling on the doors. Further, the video did not show the frequency or pace at which the Petitioner had to work.

At the direction of Petitioner's counsel, Petitioner was seen by Dr. David Brown, an orthopedic surgeon, who Petitioner initially saw on January 31, 2011. Petitioner testified that prior to that date, he had never been tested or diagnosed with carpal or cubital tunnel syndrome. Petitioner informed Dr. Brown of the fact that his job required him to open/close locks on various doors

200+ times per day and cuff/uncuff inmates. Petitioner stated that he had a two to three year history of gradual numbness/tingling in both hands, more on the right and left, and aching in both hands. Dr. Brown examined Petitioner and opined that the findings on examination were consistent with bilateral carpal tunnel syndrome and possible cubital tunnel syndrome. He recommended Petitioner have nerve conduction studies performed and referred him to Dr. Dan Phillips.

Dr. Phillips performed nerve conduction studies on Petitioner on January 31, 2011, and the studies revealed severe bilateral median neuropathy and mild ulnar neuropathy across the left elbow. On February 1, 2011, Petitioner returned to work and completed the "Workers' Compensation Employee's Notice of Injury" in which he described the injury as being carpal tunnel which occurred as a result of repetitive motion of keying doors 50 to 200+ times a day (Petitioner's Exhibit 9).

Petitioner was seen by Dr. Brown on April 4, 2011, and he still had symptoms in both hands in spite of receiving some conservative treatment. At that time, Dr. Brown recommended Petitioner have bilateral carpal tunnel surgery. Because Dr. Brown's office did not take Petitioner's group insurance, he referred Petitioner to Dr. George Paletta, an orthopedic surgeon, who saw Petitioner on May 6, 2011. Dr. Paletta reviewed Dr. Brown's medical records, the nerve conduction studies and he examined the Petitioner. Dr. Paletta opined that Petitioner had severe bilateral carpal tunnel syndrome, right greater than left, and agreed with Dr. Brown's surgical recommendation.

Dr. Paletta performed right and left carpal tunnel release surgeries on June 21, 2011, and July 21, 2011, respectively. Subsequent to the surgeries, Petitioner remained under Dr. Paletta's care and received physical therapy. Dr. Paletta released Petitioner to return to work with restrictions on July 24, 2011. On September 19, 2011, Dr. Paletta released Petitioner to return to work without restrictions. However, Petitioner returned to Dr. Paletta on October 5, 2011, because he was experiencing some recurrent symptoms, in particular, numbness/tingling in the tips of the right thumb and index fingers. Because Petitioner continued to have these symptoms, Dr. Paletta ordered that he have repeat nerve conduction studies. These were performed by Dr. Phillips on March 12, 2012, and they revealed a significant improvement in the median nerve condition but did reveal a median sensory neuropathy to the right thumb. Dr. Paletta reviewed the nerve conduction studies and opined that regeneration/reorganization of the nerve could take up to two years. He further opined that Petitioner was at maximum medical improvement and that no further active treatment was indicated.

Dr. Paletta was deposed on April 12, 2013, and his deposition testimony was received into evidence at trial. Dr. Paletta's testimony was consistent with his medical records and he reaffirmed his opinion as to the diagnosis and treatment provided by him. In regard to causality, Dr. Paletta noted that the only non-work risk factor that Petitioner had was his age of 51 years because increasing age has been identified as a risk factor for development of carpal tunnel syndrome. Petitioner's counsel provided Dr. Paletta with Petitioner's work history, as well as the DVD, Job Site Analysis and job descriptions provided by Respondent. Based on the preceding and the lack of any other factors (except Petitioner's age as noted herein), Dr. Paletta opined that



Petitioner's work activities for Respondent were a contributing factor to the development of carpal tunnel syndrome.

At the direction of Respondent, Petitioner was examined by Dr. Anthony Sudekum, a plastic surgeon with a certificate of added qualifications for hand surgery, on August 22, 2011. Dr. Sudekum reviewed Petitioner's medical records, the DVD and various documents provided to him by Respondent and examined the Petitioner. Dr. Sudekum opined that Petitioner's bilateral carpal tunnel syndrome was not caused or aggravated by his work activities and that Petitioner would have developed carpal tunnel syndrome whether he worked for Respondent or not. Dr. Sudekum opined that he did not know what caused the carpal tunnel syndrome; however, he also noted Petitioner's age as being a risk factor as well as the fact that Petitioner was overweight although not obese. Dr. Sudekum opined that Petitioner's experiencing symptoms while turning keys at work was not likely true because carpal tunnel syndrome does not occur when someone is performing that activity.

Dr. Sudekum was deposed on September 6, 2012, and his deposition testimony was received into evidence at trial. Dr. Sudekum's testimony was consistent with his medical report and he reaffirmed his opinions contained therein.

At trial, Petitioner testified that he still experiences some tingling in his hands but that it is much better than what was before. Petitioner's grip strength has also improved since the surgeries but it is not as good as it was previously. Petitioner agreed that he was able to return to work at full duty and that his job performance evaluations have also been good.

#### Conclusions of Law

In regard to disputed issues (C) and (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained a repetitive trauma injury arising out of and in the course of his employment for Respondent that manifested itself on January 31, 2011, and that Petitioner's current condition of ill-being is causally related to same.

In support of this conclusion the Arbitrator notes the following:

Petitioner credibly testified about his work activities both prior to his being employed by Respondent and when employed by Respondent. While many of Petitioner's job duties prior to being employed by Respondent required repetitive use of his hands/arms, Petitioner did not experience any symptoms until he worked for Respondent, in particular, when turning keys while locking/unlocking doors at Illinois Youth Center Harrisburg.

Petitioner did not seek any medical treatment, have any diagnostic procedures performed or have a diagnosis of carpal tunnel syndrome until he was seen by Dr. Brown and Dr. Phillips on January 31, 2011. The Arbitrator thereby finds that the injury manifested itself on that date.

Petitioner's treating physician, Dr. Paletta, testified that Petitioner's work activities for Respondent were a contributing factor to the development of Petitioner's bilateral carpal tunnel

syndrome. The only other risk factor Dr. Paletta found was Petitioner's age. He did not find Petitioner to be overweight or obese. Respondent's Section 12 examiner, Dr. Sudekum, opined that Petitioner's work activities did not cause or aggravate Petitioner's carpal tunnel syndrome and that Petitioner would have developed this condition whether he worked for Respondent or not. Dr. Sudekum opined that the cause was unknown but that Petitioner had the risk factor of age as well as being overweight. Dr. Sudekum also stated that Petitioner's developing symptoms while keying was probably not true because, in his opinion, carpal tunnel syndrome does not occur when performing that activity. The Arbitrator finds Dr. Paletta's opinion in regard to causality to be more credible than that of Dr. Sudekum.

In regard to disputed issue (E) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner gave notice to Respondent within the time prescribed by the Act.

In support of this conclusion the Arbitrator notes the following:

As aforesaid, the Arbitrator found that the condition manifested itself on January 31, 2011. The Petitioner gave notice to Respondent on February 1, 2011, which is within the time limit prescribed by the Act.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to temporary total disability benefits of four and four-sevenths (4 4/7) weeks commencing June 21, 2011, through July 23, 2011.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 17 1/2% loss of use of the right hand and 15% loss of use of the left hand.

In support of this conclusion the Arbitrator notes the following:

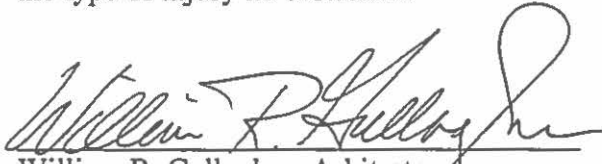
Petitioner was diagnosed with bilateral carpal tunnel syndrome and surgery was required on both hands. Petitioner recovered from the surgeries and he was able to return to work to his normal



14IWC0288

job; however, after returning to work he had a reoccurrence of symptoms, in particular, in his right thumb and index finger.

Petitioner still has complaints of tingling in both hands as well as diminished grip strength. The Arbitrator finds Petitioner to be a credible witness and that his complaints were consistent with the type of injury he sustained.



William R. Gallagher, Arbitrator

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF DU PAGE )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

## BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

**14IWCC0289**

Robert Link,

Petitioner,

vs.

NO: 11 WC 14973

City of Chicago – Department of Streets and Sanitation,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses both incurred and prospective and temporary total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Arbitrator ordered that the Respondent “provide and pay for future medical costs consisting of a bilateral arthroscopy to the shoulders as prescribed by Dr. Wolin and Dr. Cole,

including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability periods incurred for treatment resulting from these procedures.”

The Commission finds that the language used by the Arbitrator, about the future medical treatment, is too broad. The Commission instead orders the Respondent to provide and pay for the reasonable future medical costs consisting of bilateral arthroscopic surgeries to the shoulders as prescribed by Dr. Wolin and Dr. Cole, including all reasonable and necessary ancillary medical treatment and costs concerning same.

In addition, the Commission finds that the awarding of the prospective temporary total disability does not fall within §8(a). The Arbitrator has no authority to award prospective temporary total disability and therefore this part of her order should be stricken.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$893.00 per week for a period of 63 1/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent is ordered, pursuant to §8(a) and 8-2 of the Act to provide and pay for the reasonable future medical costs consisting of bilateral arthroscopic surgeries to the shoulders as prescribed by Dr. Wolin and Dr. Cole, including all reasonable and necessary ancillary medical treatment and costs concerning same.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

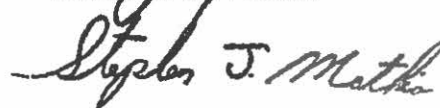
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 21 2014

  
Charles J. DeVriendt

  
Stephen Mathis

  
Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF 19(b) DECISION OF ARBITRATOR

LINK, ROBERT

Employee/Petitioner

Case# 11WC014973

CITY OF CHICAGO-STREETS AND  
SANITATION

Employer/Respondent

14IWCC0289

On 1/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2731 SALVATO & O'TOOLE  
CARL S SALVATO ESQ  
53 W JACKSON NLVD SUITE 1750  
CHICAGO, IL 60604

0464 CITY OF CHICAGO  
STEPHANIE LIPMAN  
30 N LASALLE ST SUITE 800  
CHICAGO, IL 60602

14IWCC0289

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF COOK )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)18)  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION DECISION  
 19(b)

ROBERT LINK,  
 Employee/Petitioner

Case # 11 WC 14973

v.

Consolidated cases: NONE.

CITY OF CHICAGO – STREETS AND SANITATION,  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joann M. Fratianni, Arbitrator of the Commission, in the city of Chicago, on June 15, 2012. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?  
 B. ☐ Was there an employee-employer relationship?  
 C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?  
 D. ☐ What was the date of the accident?  
 E. ☐ Was timely notice of the accident given to Respondent?  
 F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?  
 G. ☐ What were Petitioner's earnings?  
 H. ☐ What was Petitioner's age at the time of the accident?  
 I. ☐ What was Petitioner's marital status at the time of the accident?  
 J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?  
 K. ☒ Is Petitioner entitled to any prospective medical care?  
 L. ☒ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☒ TTD  
 M. ☒ Should penalties or fees be imposed upon Respondent?  
 N. ☐ Is Respondent due any credit?  
 O. ☐ Other: \_\_\_\_\_

## FINDINGS

On the date of accident, **March 30, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$69,654.22; the average weekly wage was \$1,339.50.

On the date of accident, Petitioner was 68 years of age, *married* with no dependent children.

Petitioner *has in part* received all reasonable and necessary medical services.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ 25,132.69 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 25,132.69.

Respondent is entitled to a credit of \$ 23,437.35 under Section 8(j) of the Act for medical benefits.

## ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$893.00/week for 63-1/7 weeks, commencing **March 31, 2011** through **June 15, 2012**, as provided in Section 8(b) of the Act.

Respondent is ordered to provide and pay for future medical costs consisting of a bilateral arthroscopy to the shoulders as prescribed by Dr. Wolin and Dr. Cole, including all ancillary medical costs concerning same and all periods of temporary total and/or temporary partial disability periods incurred for treatment resulting from these procedures.

Respondent shall be given a credit of \$23,437.35 for medical benefits that have been paid, and Respondent shall further hold Petitioner safe and harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall be given a credit for \$25,132.69 that was paid in temporary total disability benefits.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

**RULES REGARDING APPEALS** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator JOANN M. FRATIANNI

**December 27, 2012**  
Date



*F. Is Petitioner's current condition of ill-being causally related to the injury?*

Petitioner is a truck driver for Respondent. Petitioner on March 30, 2011 was working with a laborer on a truck that had a 100-125 pound lift gate. Petitioner attempted to lift the gate by himself when he experienced a pop in both shoulders, arms and biceps. Petitioner felt immediate pain, notified his supervisor, and was sent to MercyWorks for treatment.

When seen at MercyWorks later that day, Petitioner gave a history of injury of "while he was lifting a tail gate, he felt a pop in both biceps." Dr. Diadula noted a hollow deformity in both biceps and prescribed an MRI examination and no further work. Petitioner underwent the MRI that revealed a positive right proximal biceps tendon tear and complete disruption of the supraspinatus with mild selective atrophy of the muscle belly. Also noted was a positive complete disruption of the left supraspinatus and infraspinatus tendon. (Px2) On April 11, 2011, Dr. Diadula reviewed the MRI and diagnosed bilateral rotator cuff tears and a rupture of the proximal right biceps tendon. He prescribed no work and recommended a consultation with an orthopedic surgeon. (Px2)

On April 11, 2011, Petitioner saw Dr. Preston Wolin, an orthopedic surgeon. Dr. Wolin recorded a history of "he lifted a heavy tailgate and he felt a pop and sharp pain in both shoulders." Dr. Wolin reviewed the MRI and following examination diagnosed bilateral proximal bicep tendon ruptures with bilateral full thickness rotator cuff tears. Dr. Wolin injected both shoulders with Kenalog and prescribed physical therapy and no work. (Px3)

Petitioner then commenced physical therapy followed by a work-conditioning program for the next two months, and remained under the care of Dr. Wolin. On May 27, 2011, he saw Dr. Mohammed Atassi, his primary care physician, with complaints of back and left leg pain. Dr. Atassi recommended chiropractic treatment and felt the therapy exercises to the shoulders may be a cause. (Px1)

On July 29, 2011, Petitioner saw Dr. Wolin and reported that the therapy hurt more than it helped. On September 9, 2011, Dr. Wolin discussed surgical and non-surgical treatment to the shoulders, either accepting the current conditions, or undergo rotator cuff repairs or joint replacement. (Px3)

On September 29, 2011, Petitioner saw Dr. Brian Cole at the request of Respondent. Dr. Cole felt that Petitioner suffered an aggravation of a pre-existing condition that now needs treatment. Dr. Cole rendered the opinion that even absent the injury of March 30, 2011, Petitioner would have likely become symptomatic in both shoulders. Dr. Cole felt the next treatment step would be arthroscopy to the shoulder with an attempt at rotator cuff repair, the need for which he felt was not likely related to the injury. Should Petitioner fail to thrive despite attempted rotator cuff repair, then soon down the road he would require reverse bilateral shoulder arthroplasty. (Rx2)

Dr. Wolin on November 1, 2011 reviewed the report of Dr. Cole. Dr. Wolin felt Dr. Cole stated the injury caused an aggravation of Petitioner's pre-existing shoulder conditions. He agreed with Dr. Cole that Petitioner was in need of an arthroscopic rotator cuff repair.

On June 1, 2012, Dr. Cole authored a follow up report without examining Petitioner. In that report he repeatedly notes the wrong date of injury, but felt that he believed the injury itself somehow aggravated the pre-existing condition. Dr. Cole however stated he would stand by his earlier comment that Petitioner would have needed care despite the injury. (Rx3)

Petitioner testified that he worked for Respondent for 11 years as a driver without experiencing any symptoms to his shoulders.

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Carney,

Petitioner,

vs.

NO: 09 WC 0014

Lehigh Press,

Respondent,

**14IWCC0290**

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of nature and extent of the Petitioner's disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission views the Petitioner's disability differently than the Arbitrator and finds that the Petitioner has a 17 1/2% loss of use of the person as a whole. The Commission affirms the Arbitrator regarding her finding that Petitioner has a loss of use to the extent of 37 % of the left hand.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$624.33 per week for a period of 75.85 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of the left hand to the extent of 37%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$624.33 per week for a period of 87.5 weeks, as provided in §8(d)2 of the Act, for the

14IWCC0290

reason that the injuries sustained caused the loss of use to the person as a whole to the extent of 17 1/2%

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

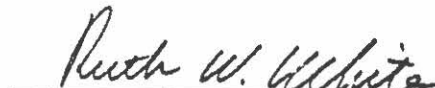
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 22 2014

  
Charles J. DeVriendt

  
Daniel R. Donohoo

  
Ruth W. White

CJD/hf  
O: 3/19/14  
049

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION  
CORRECTED

CARNEY, JOSEPH

Employee/Petitioner

Case# 09WC000014

LEHIGH PRESS

Employer/Respondent

14IWCC0290

On 8/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0320 LANNON LANNON & BARR LTD  
PATRICIA LANNON KUS  
180 N LASALLE ST SUITE 3050  
CHICAGO, IL 60601

0481 MACIOROWSKI SACKMANN & ULRICH  
ROBERT ULRICH  
10 S RIVERSIDE PLZ SUITE 2290  
CHICAGO, IL 60606

STATE OF ILLINOIS )  
 )SS.  
 COUNTY OF COOK )

- ☐ Injured Workers' Benefit Fund (§4(d))  
☐ Rate Adjustment Fund (§8(g))  
☐ Second Injury Fund (§8(e)(18))  
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION  
 ARBITRATION CORRECTED DECISION

**Joseph Carney**  
 Employee/Petitioner

Case # **09 WC 00014**

v.

Consolidated cases: \_\_\_\_\_

**Lehigh Press**  
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **7/2/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?  
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other \_\_\_\_\_

## FINDINGS

On 12/12/08, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$54,108.60; the average weekly wage was \$1,040.55.

On the date of accident, Petitioner was 52 years of age, *married* with 1 dependent child.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$53,018.49 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$53,018.49.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

## ORDER

*Permanent Partial Disability: Schedule injury*


Respondent shall pay Petitioner permanent partial disability benefits of \$624.33/week for 75.85 weeks, because the injuries sustained caused the 37% loss of the left hand, as provided in Section 8(e) of the Act.

*Permanent Partial Disability: Person as a whole*

Respondent shall pay Petitioner permanent partial disability benefits of \$624.33/week for 50 weeks, because the injuries sustained caused the 10% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

**RULES REGARDING APPEALS:** Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

**STATEMENT OF INTEREST RATE:** If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

  
Signature of Arbitrator

August 20, 2013

## FINDINGS OF FACT

The disputed issues in this matter are; 1) causal connection; and 2) the nature and extent of the injury. *See*, AX1.

Joseph Carney was employed as a feeder for Lehigh Press on December 12, 2008. He had been employed with the company approximately ten (10) years. He worked in the position of a feeder, a union job, for approximately six (6) of those years.

On December 12, 2008, the petitioner was cleaning rollers and stepping in and out of the press machine. As he stepped up into the unit, his foot slipped and he fell forward. His left hand was pulled into a roller and he twisted his body. He injured his left hand, neck, and low back.

After he had been extricated from the roller, he was taken by ambulance to Loyola Medical Center ("Loyola"). He was diagnosed as having a de-gloving injury to the left hand from the wrist to the fingers. The doctor in the emergency room irrigated the wound and noted that he would require a secondary soft tissue transfer after the flap viability was declared. An x-ray of the hand showed a soft tissue disruption with gas and swelling of the hand. *See*, PX1.

After he was discharged he began treating with Dr. Ramasastry, a plastic surgeon at Loyola. The doctor ordered an orthoplast volar short arm splint with the wrist in dorsiflexion. For the first few weeks, the petitioner continued to see Dr. Ramasastry and underwent dressing changes.

On January 21, 2009, Dr. Ramasastry noted that there was still an open area of the dorsum, which measured 1x1.5 cm, but there was no infection. He referred the petitioner to occupational therapy for range of motion therapy and stated that once the wound healed, the therapy would intensify. The doctor also prescribed a jobst glove for the petitioner to wear.

The petitioner was also seen by Dr. Alexander Ghanayem, the director of spinal surgery, in regards to his neck and back complaints. On February 6, 2009, Dr. Ghanayem felt that the petitioner had sustained a strain of the neck and back and recommended therapy with follow up care in the rehabilitation medicine department.



He referred the petitioner to Dr. Bajaj for further treatment, for his neck and back. Dr. Bajaj saw the petitioner on February 18, 2009, stating that he had increased neck and back pain following the work injury. He recommended an MRI for the lumbar and cervical spine noting that the physical examination was highly indicative of possible cervical and lumbar disc herniations. He felt that the petitioner should continue therapy and prescribed Hydrocodone and Arthrotec. *See*, PX2.

The petitioner underwent an MRI of the cervical spine on February 25, 2009. The impression was multi-level spondylosis most advanced at C5-C6 with bulging at C3-C4, deforming the cord and causing stenosis. The MRI of the lumbar spine showed mild L4-L5 and L5-S1 spondylosis as well as an L4-L5 and L5-S1 disc bulge. The radiologist noted minimal effacement of the thecal sac without significant central spinal stenosis at L5-S1. *See*, PX1.

The petitioner continued with physical therapy at Loyola. On March 17, 2009, the therapist stated that the petitioner had progressed in strengthening activities, and recommended ongoing therapy to address strengthening, range of motion deficits, upper and lower extremities strengthening, stretching and pain complaints.

On March 18, 2009, the petitioner returned to Dr. Bajaj, who diagnosed cervical and lumbar radiculitis and prescribed Lyrica and Etodolac. He also scheduled the petitioner for a cervical epidural steroid injection (hereinafter "ESI"). The petitioner underwent the first injection at Loyola on March 31, 2009.

The petitioner also began seeing a psychiatrist, Dr. Mazhar Golewale, at Baber Psychiatric & Associates. Dr. Golewale stated that the patient had undergone an extremely traumatic and horrific experience when his left hand was caught in the printing press machine. He noted that the petitioner was complaining of nightmares, flashbacks and anger towards the co-workers, as they did not come quickly to help him. Dr. Golewale diagnosed post-traumatic stress disorder and placed the petitioner on Zoloft and Clonidine. The petitioner then began seeing the doctor on a regular basis. *See*, PX3.

The petitioner returned to Dr. Ramasastry on April 6, 2009, who recommended that he continue to wear the jobst glove and continue under psychiatric care. The petitioner returned to Dr. Golewale on April 9, 2009, who noted he was still having trauma, flashbacks and was waking up with night sweats. He prescribed Seroquel to be taken with the Zoloft.

Dr. Bajaj recommended a lumbar ESI at L5-S1 on the left to address the lumbar radiculitis and Petitioner underwent the injection on April 24, 2009.

The petitioner returned to Dr. Ramasastry on May 11, 2009 and the doctor ordered an EMG and NCV; and told the petitioner to continue wearing the jobst glove as well as the orthoplast splint at night. The doctor noted that Petitioner was not sleeping well and was still having nightmares. He underwent EMG testing on May 27, 2009, which reported an impression of a local crush injury involving the superficial sensory branches with minimal findings of ongoing denervation or re-innervation, with a suggestion of superimposed cervical radiculopathy. The doctor also stated that there was an abnormality in the mid cervical paraspinal. *See*, PX1.

When the petitioner returned to Dr. Bajaj on June 24, 2009, the doctor diagnosed both lumbar and cervical radiculitis as well as myofascial pain. He felt the petitioner needed to continue with the therapy, and he increased the Lyrica. He noted that the petitioner had complaints of neck pain with knots on the right upper trapezius; and left shoulder pain.

The petitioner returned to Dr. Bajaj on July 16, 2009, who recommended a second lumbar ESI on the left at L5-S1. The doctor noted that the radicular symptoms were returning and Petitioner was complaining of stiffness in the low back. He underwent the lumbar ESI on July 22, 2009.

Dr. Bajaj also ordered an functional capacity evaluation ("FCE") which the petitioner underwent at Loyola on August 5, 2009. The therapist recommended light duty work with a period of work conditioning.

When Petitioner returned to Dr. Bajaj on August 14, 2009, he scheduled an additional cervical ESI as well as an MRI for the right knee. The petitioner advised the doctor that at the time of the injury, he fell onto his knees and was having knee pain but the symptoms had resolved until recently. The petitioner also continued to see Dr. Golewale during this time and on August 10, 2009; the doctor increased the Zoloft, stating that Petitioner was developing anxiety. The doctor felt that he would need modified work conditions or would have to find a different job. The doctor told him to drive to Lehigh Press and sit in the parking lot, as he was trying to desensitize the petitioner, to enable him return to some type of work. *See*, PX3.

The petitioner underwent a second cervical ESI on August 25, 2009. When he returned to Dr. Bajaj on September 10, 2009, the doctor noted that the cervical injection had

helped the scapular area and the neck pain. At this point, the doctor was diagnosing both cervical and lumbar radiculitis, shoulder impingement on the left and right knee pain, with possible meniscal injury. He also increased the Lyrica and added additional exercises to improve the tendonitis and impingement. He felt the petitioner should continue receiving psychiatric care for the post-traumatic stress. *See*, PX1.

The petitioner returned to Dr. Ramasastry on October 23, 2009, who stated that he was still wearing the jobst glove and complaining of numbness, tingling and pain around the hand. He also noted that the petitioner's back and neck problems were continuing and he was having knee problems. Dr. Ramasastry specifically stated that it was possible that the torque, the petitioner suffered with the hand injury, could have contributed to his knee problem. He recommended ongoing occupational therapy and work conditioning and a return to work with modifications regarding weight. *See*, PX1.

Dr. Bajaj saw the petitioner on November 12, 2009, who was complaining that his back and leg symptoms had recurred. The doctor recommended another lumbar ESI. He also noted that the petitioner had limitations with wrist pain and weakness, which would not allow him to lift heavier weights. He stated that Petitioner should continue to treat with the psychologist, regarding the post-traumatic stress; and should continue on medication. Dr. Bajaj performed another lumbar ESI on November 19, 2009.

When the petitioner presented to Dr. Bajaj on December 4, 2009, he was complaining of increased numbness in the left foot and heel as well as radicular pain in the buttocks and posterior thigh. He also was complaining of numbness and tingling in the hand and little finger, as well as neck pain. Dr. Bajaj noted that the petitioner was progressing with work conditioning and should follow up with an FCE. He felt that since the cervical pain was tolerable, he would wait to see, if the petitioner needed interventional options. He stated that the petitioner should continue working with the therapist for core and lumbar stabilization; and continue treating with the psychiatrist.

The petitioner underwent additional work conditioning at Industrial Rehab Allies (hereinafter "IRA") and on December 3, 2009, the therapist noted that Petitioner's compliance was good but he was not ready to return to work in a full duty capacity.

The petitioner returned to Dr. Ramasastry on December 10, 2009. At that time, the doctor felt he could return to work in a light duty capacity as there was nothing further he could offer him; and he discharged him from his care. Dr. Ramasastry noted that the petitioner was still complaining of neck, back and knee problems, with numbness and tingling in his hand.

The petitioner returned to Dr. Bajaj on January 18, 2010, who felt that he had been making good progress with work hardening but that he had additional trigger points around the left shoulder and neck. Dr. Bajaj recommended another cervical ESI. The doctor also prescribed Elavil to help with sleep and nighttime pain and stated that he should discuss the medications with Dr. Golewale. *See*, PX1.

The petitioner continued to see Dr. Golewale on a regular basis while he was undergoing his treatment at Loyola. The petitioner was also seeing a counselor at the facility, Karl Downing, who was providing emotional support and stress reduction techniques. *See*, PX3.

On February 10, 2010, the therapist at IRA noted that the petitioner had completed ten weeks of work hardening and had made a significant improvement regarding functional and musculoskeletal pain. The petitioner was discharged from the program with a medium to heavy physical demand level. *See*, PX2.

The petitioner presented to Dr. Golewale on February 25, 2010, who continued to diagnose Petitioner as having post-traumatic stress disorder and continued his medications.

The petitioner returned to Dr. Bajaj on March 26, 2010, who noted that he was off Lyrica and would be able to return to work at a medium to heavy-duty level only. Dr. Bajaj again stated that the petitioner had suffered a crush injury, which resulted in cervical and lumbar radiculitis and neuropathic pain in the left hand and leg. He stated that the symptoms of left shoulder quivering left quad numbness; and pain in the neck and back were chronic and would likely remain. He encouraged Petitioner to continue with his psychiatry appointments and stated that he had reached maximum medical improvement ("MMI") in terms of his medical treatment.

The petitioner eventually returned to work for Lehigh Press in May of 2010. On May 3, 2010, Dr. Golewale noted that Petitioner was making visits to his work place, two times a week, and was less anxious. However, he continued his medications. When he returned to Dr. Golewale on June 3, 2010, he stated that he was working but not around machines; and was trying to adjust to his new job. He continued the petitioner's medication at that time.

The petitioner subsequently returned to Dr. Bajaj on September 23, 2010. At that time, he was complaining of increased pain in the left groin and spasms in the right leg. The

doctor ordered an MRI of the lumbar spine, prescribed a medrol dose pack and recommended additional therapy.

The petitioner underwent a new lumbar MRI on October 1, 2010. The radiologist's impression was degenerative changes at L4-L5 and L5-S1, and he noted that the disc bulge at L4-L5 appeared to be slightly decreased but that there was a high signal intensity in the posterior aspect of the disc; which was compatible with an annular tear. Dr. Bajaj recommended additional ESI's however; the petitioner did not undergo any further injections.

The respondent had the petitioner evaluated by Dr. Jesse Butler, on October 27, 2010. Dr. Butler was of the opinion that the petitioner was at MMI for his cervical and lumbar spine.

The petitioner continued to see Dr. Golewale after the IME. He remained under the care of the psychiatrist until September 14, 2012. Dr. Golewale began to taper the petitioner off his medications. However, his diagnosis remained the same, active post-traumatic-stress disorder. *See*, PX3.

When Dr. Golewale last saw the petitioner in September 2012, he noted that he was more relaxed at home but would get anxious around machines. He still diagnosed the petitioner as having post-traumatic stress disorder. The doctor wrote a report stating that the petitioner was stable and functioning, but he advised him not to work near machines that caused his trauma in order to prevent him from reliving the experience. The petitioner testified that he no longer works as a feeder and does not work around the printing machines.



## Conclusions of Law

### F. Is Petitioner's current condition of ill-being causally related to the injury?

Under the provisions of the Illinois Workers' Compensation Act (the "Act"), the Petitioner has the burden of proving, by a preponderance of credible evidence, that the accidental injury both arose out of and occurred in the course of employment. *Horath v. Industrial Commission*, 96 Ill. 2d 349, 449 N.E. 2d 1345 (1983). An injury arises out of the Petitioner's employment if its origin is in the risk connected with or incidental to employment so that there is a causal connection between the employment and the accidental injury. *See, Warren v. Industrial Commission*, 61 Ill. 2d 373, 335 N.E. 2d 488 (1975). *See also, Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226 (1974). The mere fact that the worker is injured at a place of employment will not suffice to prove causation. The Act was not intended to insure employees against all injuries. *Quarant v. Industrial Commission*, 38 Ill. 2d 490, 231 N.E. 2d 397 (1967). The burden is on the party seeking an award to prove, by a preponderance of credible evidence, the elements of the claim; particularly the pre-requisite that the injury complained of arose out of and in the course of employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473, 231 N.E. 2d 409, 410 (1967).

The petitioner sustained a very serious and traumatic de-gloving injury to his left hand on December 12, 2008. The petitioner testified that at the time of the injury, he fell forward and his left hand was pulled into a roller. His body twisted and he injured his neck and back as well as his left hand. The petitioner was taken by ambulance to Loyola Medical Center ("Loyola") and received months of treatment from various doctors including, Dr. Ramasastry, the plastic surgeon, Dr. Ghanayem, the orthopedic surgeon, Dr. Bajaj, the physical medicine specialist and Dr. Golewale, the psychiatrist.

The petitioner testified that he had never been under psychiatric care prior to the date of accident; and he had never undergone substantial treatment for his neck and back prior to the date of accident. The petitioner did testify that he had strained his mid-back muscles about fifteen years earlier but only treatment received was with a heating pad and massages. He had never undergone MRI testing or injections to either his neck or low back prior to December 12, 2008.

When the petitioner saw Dr. Ghanayem on February 6, 2009, the doctor stated that he had developed neck and low back pain following the injury when he tried to get himself out of the machine. When the petitioner saw Dr. Bajaj, he noted that the neck and back pain began December 12, 2008, after the accident at work. The petitioner was diagnosed as having lumbar and cervical radiculitis and was treated with lumbar and cervical ESI's. The petitioner also underwent MRI's of both the cervical and lumbar

spines. Dr. Bajaj stated that the petitioner had disc bulging in both the lumbar and cervical areas.

The petitioner underwent an EMG test on May 27, 2009. The EMG study was abnormal and suggested superimposed cervical radiculopathy. The electrical findings were also consistent with a crush injury involving the superficial sensory branches.

All of the doctors who treated the petitioner at Loyola felt that the petitioner's condition regarding his lumbar and cervical spine as well as his hand was due to the work injury he sustained on December 12, 2008. In addition, the petitioner developed a problem with his knees. Dr. Ramasastry felt that the torque, which the petitioner sustained when his hand was pulled into the roller, could have contributed to the knee problems.

The petitioner also underwent psychiatric treatment. He was diagnosed as having post-traumatic stress disorder by Dr. Golewale, who attributed his condition to what he termed an "extremely traumatic and horrific experience".

The respondent had the petitioner evaluated by Dr. Jesse Butler on October 27, 2010. Dr. Butler was of the opinion that the right-sided leg pain was not the result of the work injury and that the petitioner had a pre-existing stenosis at L4-L5.

However, Dr. Bajaj wrote a report indicating that the petitioner was initially diagnosed with left-sided lumbar radiculopathy and spinal stenosis following the work injury. He felt that even though there were complaints of right sided leg pain, given the fact that he did not have prior back issues, he felt the symptoms on the right leg were secondary to the injury at work.

After reviewing the medical records and considering the credible, unrebutted testimony of the petitioner, the Arbitrator concludes that the petitioner's condition of ill-being regarding his neck, low back, left hand, and knees, as well as the psychiatric care he underwent is causally related to the injury of December 12, 2008.

#### **L. What is the nature and extent of the injury?**

The petitioner sustained a very serious de-gloving injury on December 12, 2008, which resulted in his need for psychiatric care. He was diagnosed with post-traumatic stress disorder and placed on permanent restrictions by Dr. Golewale. The doctor stated that he is unable to return to work performing his regular duties as a feeder since he does not



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want him to work around the printing press machines. The petitioner testified that he gradually returned to work at Lehigh Press but now does repairs.

The job of a feeder is a union job and required Petitioner to work on printing presses. Prior to the injury, he was responsible for running in-lines, washing the press, changing plates, and making repairs. Because of this injury, he can no longer perform that particular job. Although the petitioner has returned to work at Lehigh Press, his restriction would limit his ability to obtain employment elsewhere. The petitioner now performs repair work only. This job requires him to repair parts, perform inventories and work with hot melt machines. The hot melt machine is very different from the large printing press machines and does not contain any type of rollers.

In addition to the psychiatric problems, the petitioner was diagnosed as having a cervical and lumbar radiculitis, necessitating several ESI's. He testified that he continues to have pain in his neck and back. He also testified that he does not have the patience that he once had and is unable to pursue his hobbies. Prior to the injury, the petitioner would go deer hunting but now he is unable to use a bow. He testified that his left wrist cannot support the bow.

The petitioner is right handed. He uses his right hand to perform most of the repair work. He testified that he uses his left hand only as a guide. He further stated that he continues to have pain and stiffness in his left hand. His thumb and forefinger are restricted on the left hand and the stiffness is constant. He stated that he has a "pins and needles" sensation down his shoulder to his fingertips and his left side and left leg are numb.

The Arbitrator concludes that the petitioner has sustained a permanent partial disability because of the psychiatric, neck and back problems due to the injury. He has returned to work, with restrictions; and continues to have ongoing issues with his neck and back. In addition, the petitioner has physical restrictions and ongoing problems with his left hand.

The Arbitrator awards the petitioner 37% loss of use of his left hand due to the degloving injury he sustained. He is also awarded 10% loss of use of a person as a whole.